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THURSDAY, JULY 1, 1999

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

ADMINISTRATIVE MEETING

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

Shoreline Permit – The Commissioners approved a Shoreline Permit for Mike Lindemer, Seeley Area Chamber, 145 Beach Street, for a swimming raft on Seeley Lake.

Other items included:

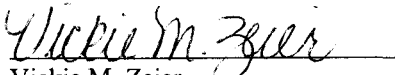
- 1) The Commissioners approved postponing closure of the Huson railroad crossing until an RSID for the residents can be formed. Jesse Sattley, RSID Coordinator, will begin this process.
- 2) The Commissioners appointed Dart Smith as 2nd alternate to the County Park Board, through May of 2000.

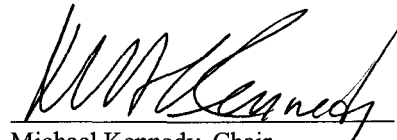
The minutes of the Administrative Meeting are on file in the Commissioners Office.

FRIDAY, JULY 2, 1999

The Board of County Commissioners did not meet in regular session; Commissioner Evans was out of the office all day, and Commissioner Carey was out of the office all afternoon.

On Saturday, July 3, Commissioner Evans attended the opening of the Northside Railroad Crossing Bridge, and on Sunday, July 4, Commissioner Carey spoke at the Historical Museum's 4th of July celebration.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, JULY 5, 1999

The Courthouse was closed for the Independence Day holiday.

TUESDAY, JULY 6, 1999

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

Monthly Report – Chair Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for Justice Court 1, John Odlin, for the month ending June 30, 1999, and the Report of the Clerk of District Court, Kathleen Breuer, for the month of June, 1999.

WEDNESDAY, JULY 7, 1999

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

Audit List – The Commissioners signed the Audit List, dated July 6, 1999, batch numbers 2 and 3, with a grand total of \$34,539.12. The Audit List was returned to the Accounting Department.

Audit List -- Commissioners Evans and Kennedy signed the Audit List, dated July 7, 1999, batch numbers 5 - 7, with a grand total of \$25,148.39. The Audit List was returned to the Accounting Department.

Audit List -- Commissioners Evans and Kennedy signed the Audit List, dated July 7, 1999, batch number 8, with a grand total of \$5,479.84. The Audit List was returned to the Accounting Department.

Monthly Report – Chair Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen Orzech, for the month of June, 1999.

Plat and Declaration – The Commissioners signed the plat and declaration for Wallace Creek Estates, a subdivision plat located in the SE1/4 of the SE1/4 of Section 22, the S1/2 of the S1/2 of Section 23, the NW1/4 of Section 26, and the NE1/4 of the NE1/4 of Section 27, T12N R17W, PMM, Missoula County, a total area of 110.17 acres, with the owners/subdividers of record being Roy P. and James L. Handley.

ADMINISTRATIVE MEETING

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

Agreements – The Commissioners signed two Agreements for provision of breast and cervical cancer screening services for Partnership Health Center patients through the Montana Breast and Cervical Health Program in Missoula County:

1. With Dr. Louis Kattine, for the period June 1, 1999 through September 30, 1999;
 2. With Dr. Lori Grimsley, for the period June 1, 1999 through September 30, 1999.
- Both Agreements were returned to Janet Schafer at PHC for further handling.

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with the Missoula Job Service for “Welfare to Work” work experience for participants. Effective dates are July 1, 1999 through June 30, 2000. One original was returned to Marie Pruitt in the Personnel Office, and one was recorded.

Other items included:

- 1) The Commissioners reappointed Chuck Keegan and Jim Valeo to the Missoula Development Authority through June 30, 2002.
- 2) The Commissioners approved payment of MACo dues in the amount of \$7,000.00 for FY2000.

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

PUBLIC MEETING – July 7, 1999

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

Public Comment

None

Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$34,539.12. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Hearing: Shoreline Permit Variance Request – Gosselin (Salmon Lake)

Brian Maiorano, Office of Planning and Grants, presented the staff report.

Cary Gosselin is requesting a Shoreline Permit for a 280 square foot floating dock on Salmon Lake. A variance is requested to use pressure treated wood for a small portion of the dock. The property is legally described as Lot 8 of Salmon Lake Shore Sites, Section 32, Township 16 North, Range 14 West.

Mr. Gosselin first installed a dock without a permit in June 1998. In August 1998, OPG notified him that a permit is required for a dock installation. It was then discovered that part of the dock is made from pressure treated wood, a material prohibited by Missoula County Shoreline Regulations.

While Mr. Gosselin purchased the dock on December 16, 1997, one month after the Shoreline Regulations were adopted, he did not purchase the property until December 31, 1997. He states that he did not become aware of the regulations until purchase of the property.

The main reason for not using pressure treated wood is so as not to materially diminish water quality. Peter Nielsen of the Health Department reported that chemicals are most likely to leach from pressure treated wood when exposed to rain, which is slightly acidic. The pressure treated wood on this dock is largely shielded from rain by the decking. The small amount of pressure treated wood is unlikely to have adverse effects. There should be no cumulative impacts, as future docks will not use pressure treated wood.

All other aspects of the dock meet the requirements of the Shoreline Regulations. The Office of Planning and Grants recommends approval of the requested variance to use pressure treated wood in part of the dock and approval of the permit, with conditions listed in the staff report.

Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the variance request to use pressure treated wood on a small portion of the dock and approve the permit for a dock on Salmon Lake, with the conditions listed in the staff report, based on the recommendation of staff. Commissioner Carey seconded the motion.

Commissioner Carey asked Brian Maiorano if the seller of the dock should have known about the regulations prohibiting pressure treated wood.

Brian Maiorano stated the dock was built in Coeur d’Alene and in Idaho those standards don’t apply.

Chair Kennedy stated new regulations are being administered, which gives rise to this kind of consideration. This variance is justified under these circumstances but it does not set a precedent for future action by this Board. He then called the question.

The motion carried on a vote of 3-0.



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Hearing: LeRoi Smith Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described in Book 150 Micro, Page 769.

LeRoi Smith has submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 23.5 acres in size located near Seeley Lake off Airport Road and Deer Park Drive. Mr. Smith proposes to create an approximately 21 acre parcel on the east portion of the property for transfer to his three sons; Daniel L. Smith, Dwight L. Smith, and Dale L. Smith, jointly.

The history of the parcel is as follows: In 1970, the property was transferred to LeRoi Smith and Marjorie L. Smith.

According to the records kept by the Missoula County Surveyor, the applicant has used the following exemptions to the Subdivision and Platting Act: Creation of parcels greater than 20 acres in size filed as COS 3722 in 1989 and an occasional sale filed as COS 3476 in 1990. Both of these exemptions were on property that adjoins this property.

LeRoi Smith could not be present today and is represented by Dick Ainsworth, Professional Consultants Incorporated.

Dick Ainsworth, Professional Consultants Incorporated, stated he was representing LeRoi Smith. He read Mr. Smith's memo for the record. He felt between Mr. Smith's note and Colleen Dowdall's comments, it explained the situation adequately. He would answer any questions the Commissioners may have.

"I'll be in South Dakota on July 7th, so you will have to represent me at the hearing. Simply put, I have 23.5 acre parcel that I purchased in 1970. We put a vacation home on it and enjoyed many vacations here in Seeley Lake since 1970. I have always planned to give the property to the kids as they still come to Seeley for vacations. I need to sell the house on the property with about 3 acres. The remaining 20+ acres I wish to give to my three boys now rather than put the transfer in my will. This will allow them to use the property as they wish now instead of waiting until I am gone. -LeRoi Smith"

Chair Kennedy stated that because of the unusual nature of this process, the Board could ask questions of the applicant or representative that may be personal in nature. He asked why Mr. Smith was not choosing to describe specific parcels for each of his three sons.

Dick Ainsworth stated he asked Mr. Smith that question as well. Mr. Smith stated it was his understanding that the boys wanted to own the land jointly and was it okay to do it that way. In checking with Colleen Dowdall, she stated it was a little unusual but there was no reason it could not be done that way.

Chair Kennedy asked if Mr. Smith knew that he could not use the family transfer process to now subdivide that parcel.

Dick Ainsworth stated he told Mr. Smith he would lose the option to convey his sons another parcel and he was aware of that.

Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by LeRoi Smith to create a new parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing: Charlie's Acres (3 lots) – Mullan Road and Deschamps Lane

Allison Handler, Office of Planning and Grants, presented the staff report.

This is a request to create a three-lot subdivision on a 61.64 acre parcel of land, splitting off two 5.72 acre parcels on the west side. There is an existing irrigation ditch owned by the Grass Valley French Ditch Company that runs north-south and it is to be used as the center line of Lots 1 and 2 on the west, and Lot 3, a 50 acre parcel on the east. In part, the applicant, Charlie Graham, poses to do this because the irrigation ditch minimizes his access to the western portion of the property.

There were five variances requested but Variance Number 5 will be omitted, the request to vary from the 3 to 1 lot length/width ratio. Staff has determined that variance is not necessary.

Staff recommends approval of the subdivision with four conditions. A major issue looked at with regard to this subdivision was the effect on agriculture. In this case, approximately 11.44 acres are being taken out of agricultural use and this is prime agriculture land. However, 50 acres in Lot 3 will be retained in agricultural production. The location of the irrigation ditch does make it difficult to utilize the western 11.44 acres. The plat shows a 30 foot irrigation easement along the ditch for maintenance by the Grass Valley French Ditch Company. Effects on local services were also looked at. Access is from Mullan Road and Deschamps Lane. Deschamps Lane intersects Mullan Road at a very acute angle that makes right-hand turns from Deschamps difficult. There are plans at some time in the future to realign Deschamps Lane. When Moderie Lots to the west was approved, there is a small parcel of land in the southeastern corner of that subdivision which was reserved specifically for a future realignment of Deschamps Lane.

Mullan Road is a primary travel corridor. The applicant has requested to vary from the primary travel corridor standards, which are landscaping standards along those roads determined to have a specific scenic value in Missoula County. Staff has recommended denial of that variance request because the adjacent subdivision, Moderie Lots, was required to comply with the standard. Staff did keep in mind that Lot 3 is reserved for primarily agriculture and would be in keeping with the



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intent of the regulation. In the conditions it was recommended that as long as Lot 3 is used primarily for agricultural uses that the requirement to landscape with trees wouldn't necessarily have to be met.

With regard to Criteria 3 and 4, Effects on the Natural Environment and Wildlife and Wildlife Habitat, this property contains an approximately 3 acre pond with an island. The pond is artificial, excavated a few years ago to provide gravel for Mullan Road improvements. The pond functions as a wetland and provides important habitat that staff felt was necessary to protect. The applicant has designated an area of riparian resource 25 feet around the perimeter of the pond as there is not a clear distinction between riparian vegetation and pasture grasses. Staff recommends designation of a no-build zone around the pond and development in the future should minimize erosion into the pond to protect the water quality. Staff also recommended that livestock be fenced off the area.

Staff recommends approval of the subdivision. The four conditions are fairly basic. Condition 1 is an RSID waiver for future sewer and water improvements and for improvements to Deschamps Lane and Mullan Road. Condition 2 is the standard \$100 fire fee to Missoula Rural Fire District. Condition 3 is the primary travel corridor landscaping requirements. Condition 4 is with regard to riparian resources. One of the original conditions with regard to the 3 to 1 ratio was omitted as it was determined to be unnecessary.

Ron Ewart, Eli & Associates, developer's representative, was present. He stated they were in agreement with all the conditions. The property is owned by Charlie Graham who lives up Miller Creek. He has owned and farmed this property for many years. A friend of his asked if he could buy 5 acres of the property. Charlie Graham told his friend that he did not have a lot of use for the property west of the irrigation ditch because access was difficult. He had plans to divide the property to the west of the ditch and sell his friend one of the 5.2 acre lots and possibly give his daughter the other lot. The intersection of Mullan Road and Deschamps Lane is less than the required 90° angle. They are willing to waive the right to protest an RSID for any improvements to those roads. It should not take a lot of resources and Moderie Lots gave some right-of-way to help with the realignment. The situation has existed for over 100 years and should be fixed, but over time, sufficient room for a right turn has been created. There have been eight accidents in the half mile area of this intersection during the last 10 year period, only 2 injuries and no fatalities, none of which were related to the actual intersection itself. The pond on Lot 3 was dug out in 1995 for gravel for Mullan Road improvements.

Chair Kennedy opened the public hearing.

Mark Zimmerman stated he was representing the Grass Valley French Ditch Company. As far as the Company is concerned, they are not opposed to the development as long as they have their easement. He drives that road every day and stated the intersection does need to be addressed. He was not sure whether or not this was the time to address that improvement. To pass the cost to Charlie's Acres would be cost prohibitive. Hopefully sometime in the near future the residents of Deschamps Lane will address the situation.

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

Commissioner Evans wanted to make sure it was understood that the primary travel corridor standards are not to be imposed on the majority of the property as long as it remains in agricultural use.

Allison Handler stated the condition is worded so that the standards will apply to Lots 2 and 3, which have frontage on Mullan Road, upon development of the premises for purposes other than agriculture. As long as those lots remain alfalfa fields, that meets the intent of the standard. If housing is put on the premises, then the standard must be complied with.

Commissioner Evans stated she wanted that explanation in the minutes so there is no question.

Chair Kennedy asked what the territorial extent of Moderie Lots was.

Ron Ewart stated the subdivision fronts on Mullan Road and Deschamps Lane and there is a section committed for the realignment of Deschamps Lane.

Chair Kennedy stated the reason for his question concerned the dust and maintenance problems on the road. He wondered about the advisability of forming the RSID now and include as much property as possible to insure the RSID would pass.

Horace Brown asked which properties the RSID would be on.

Chair Kennedy stated it would be on the Moderie Subdivision, Charlie's Acres Subdivision and anyone else adjacent to it that could be included to insure passage of the RSID.

Horace Brown stated he did not think the RSID would pass.

Chair Kennedy stated his question was not whether it would pass or not but the advisability of doing it.

Horace Brown stated the road needs to be paved and the intersection requires a lot of work. The base is primarily clay. The road was reconstructed from the intersection up to the irrigation ditch in 1988, so that part would meet standards with some base work, gravel and paving. The intersection would require taking out the clay and putting in fabric and a base.

Chair Kennedy stated that if this project is pursued, it would substantially shorten the length of Deschamps Lane, because of the approach to Mullan Road. That would require less construction than improving Mullan Road. It seems like this should be considered as it would satisfy the dust, safety and maintenance problems.

Horace Brown stated some of the old area had already been reconstructed. Some of that material could be used to construct the new section.

Chair Kennedy stated construction of pavement on the main part of Deschamps Lane would not be a serious problem as an adequate base has already been constructed.

Horace Brown stated that was correct.

Chair Kennedy asked Horace Brown if he had any objections if the Board decided to take that action.

Horace Brown stated he did not.

Commissioner Evans asked Allison Handler if there were waivers on Moderie Lots?

Allison Handler stated there were waivers.

Commissioner Evans asked Horace Brown if there was a chance for millings on the road?

Horace Brown stated there was a possibility, but it was quite a ways in the future. There is a big ranch in the area with a lot of frontage. How the RSID is implemented needs to be looked at, whether it would be based on lots or frontage. The ranch would have more frontage than everyone else would.

Commissioner Evans asked if Horace Brown could develop some estimates of what this might cost.

Horace Brown stated he would develop those figures.

Commissioner Evans moved that the Board of County Commissioners approve Charlie's Acres Summary Subdivision, based on the findings of fact in the staff report; approve variance requests 1, 2 and 4; and deny variance request 3 with the understanding that primary travel corridor standards would not have to be put in until such time as the land use changes. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Charlie's Acre Summary Subdivision Conditions of Approval:

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

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for installation of public sewer and water service, and for improvements to Deschamps Lane and Mullan Road, based on benefit. Such improvements shall include but not be limited to installation of sidewalks or pedestrian pathways, paving of Deschamps Lane, and reconfiguration of the intersection of Deschamps Lane and Mullan Road. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land."

2. The applicant shall contribute \$100.00 per new lot to the Missoula Rural Fire District prior to plan filing. The Fire District shall review and approve final driveway design for emergency access.
3. The following landscaping requirements shall be included in a development agreement:

Within the designated "landscape corridor" on Lots 2 and 3, upon development of the premises for purposes other than vacant or solely agricultural land, the following landscaping shall be installed:

- * At a minimum, one (1) 2-inch caliper tree or three (3) vertically branching five (5) gallon shrubs shall be planted for every thirty (30) feet of frontage along Mullan Road. Native species of trees and shrubs that do not require seasonal irrigation shall be selected.
 - * Utility companies shall be contacted to check for potential conflicts with overhead/underground lines prior to planting.
 - * Each of the lots shall be maintained and kept weed-free, excluding that portion of the lots in the County right-of-way.
 - * The landscaping shall have a maximum height of thirty (30) inches along Mullan Road within a minimum of one hundred (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 applicant shall show the area of riparian resource on the face of the plat as a no-build zone extending twenty-five (25) feet from the edge of the pond. The applicant shall modify the riparian management plan to include provisions to exclude livestock from the pond area, and to ensure that site improvements on Lot 3 drain away from the pond.

Hearing: Missoula Development Park Zoning Amendments (Postponed from June 16, 1999)

Chair Kennedy stated the public hearing had been closed at the previous meeting, however, he would allow testimony today.

Jennie Dixon, Office of Planning and Grants, presented an update.

Missoula County is requesting that the proposed amendments to the Missoula Development Park Special Zoning District (Section 6.07) be approved. The Planning Board conducted a public hearing on these amendments on Tuesday, June 1, 1999, and voted 6 to 0 to recommend that the Missoula Development Park Special Zoning District (Section 6.07) be amended as shown in the staff report, with two modifications. These modifications are: 1) Section 6.07 D.2.a.(1) add the following language: "Any parking plan must have Missoula Development Authority approval prior to issuance of a zoning compliance permit for the main use." and 2) Section 6.07 D.2.d. delete the following language: "until July 1, 1999, and by the health Department after that date."

A summary of the proposed changes include:

- Amend the authorized uses in the Light Industrial and Community Commercial subdistricts to allow for automotive sales and supply and hardware and home building supply as conditional uses within a defined Airway Boulevard Corridor, which generally falls along the Airway Boulevard Interchange. They would be subject to conditional use standards that have been defined in the proposed changes.
- Allow outside storage as a conditional use on industrial lots except those abutting I-90, again with some design standards for that activity.
- Amend the on-site landscaping requirement from 1 tree per 1,000 square feet, including boulevard trees, to 1 tree per 2,000 square feet and not include boulevard trees.
- Increase the amount of parking authorized on industrial-zoned lots. The additional amendments on the parking standards are a recommendation by the Projects Office and have not been received by staff as a formal request. The Commissioner may act on those proposed amendments if they wish but they are not included with the OPG action requested today.

Staff is recommending approval of the proposed changes as drafted with two minor modifications from the Planning Board as noted above.

Nick Kaufman stated to clarify the parking amendments, this was a request by Ron Klaphake of the Missoula Area Economic Development Corp. The Commissioners have language for these amendments if they wish to entertain them today. It is not a recommendation of the Development Office.

Chair Kennedy asked if anyone would like to speak on this issue?

Jim Mocabee, A & I Distributors, stated they recently purchased Lot 2A-1 in Block 8 in the Industrial Park with an understanding they would have the ability to do some outside storage. He was here to support the amendment to allow outside storage in the Development Park. If there is a problem with approving all the changes as a whole, he asked that the outside storage issue be separated from the rest so they could continue construction of their building.

Chair Kennedy stated it sounded like A & I's purchase of the lot was contingent on the availability of outside storage.

Jim Mocabee stated there was a good faith understanding there would be outside storage.

Chair Kennedy asked where that good faith understanding came from?

Jim Mocabee stated it was offered by Paul Webber and the realtors.

Chair Kennedy asked Paul Webber if that representation was made?

Paul Webber stated that as a contingency for accepting A & I's offer, they could not guarantee outside storage until after the results of the rezoning hearing. A response was not received from A & I in writing, but MDA was notified by A & I's realtor that they were in need of proceeding with the acquisition of the property even knowing the outside storage could not be guaranteed. A & I was taking that risk knowing that outside storage could not be guaranteed.

Chair Kennedy closed the public comment.

Commissioner Carey stated he was unclear about the parking proposal from Ron Klaphake. Did MDA support that proposal?

Nick Kaufman stated they were neutral on the proposal.

Commissioner Evans moved that the Board of County Commissioners approve the proposed amendments to the Missoula Development Park Special Zoning District as presented in the staff report with the findings of fact and conclusions of law. Commissioner Carey seconded the motion.

Chair Kennedy stated that at the last meeting he made the comment that he was not in favor of the proposal. This project is one that is turning out to be a stellar project any way it is measured. There has been substantial interest in the Development Park from all sorts of interested parties without these changes, which he felt was significant. It concerned him that the original proposal was to develop a park that was different from the ordinary. It seems that when those restrictions begin to loosen, it accommodates uses that make the park similar to those things that originally it was hoped to be different from. He is frustrated by the proposed changes in view of the success so far in marketing the property. He did not see the immediate need for these considerations. He then called the question.

Commissioner Carey stated that he is in favor of the proposal because he believed it was a reasonable response to the market. He also believed it positioned the County to get the best possible return on its investment. He felt this was a reasonable adaptation indicating the ability to be flexible and to respond to the realities of the situation, which is why he supports the changes.

The motion carried on a vote of 2-1 (Chair Kennedy opposed).

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

Following the public meeting, Commissioners Carey and Evans (Commissioner Kennedy opposed) signed Resolution No. 99-048, a resolution of intent to amend Section 6.07, the Missoula Development Park Special Zoning District Regulations.

THURSDAY, JULY 8, 1999

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

Audit List – The Commissioners signed the Audit List, dated July 8, 1999, batch number 9, with a grand total of \$1,643.57. The Audit List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Shoreline Permit – Chair Kennedy signed a Shoreline Permit for Audra Adelberger to install a domestic water system for a cabin located directly west of 1464 South Holland Lake Road. The permit was returned to Brian Maiorano in OPG for further handling.

Assistance Award and Grant Agreement – Chair Kennedy signed an Assistance Award and Grant Agreement for \$500,000.00 in Economic Development Initiative – Special Grant Funds for the SHARE House. The forms were returned to Nancy Harte in OPG for further handling.

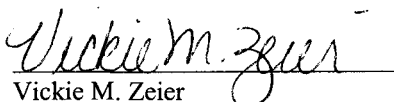
Agreement – The Commissioners signed an Agreement with Donald L. Shoemaker for painting of the Coney Creek microwave reflector to reduce its visual impact. Shoemaker may paint the reflector “forest green” or a similar earth color.

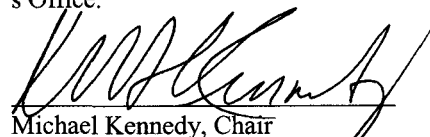
The minutes of the Administrative Meeting are on file in the Commissioners Office.

FRIDAY, JULY 9, 1999

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.

Payroll Transmittal – The Commissioners signed a Payroll Transmittal for Pay Period 12, with a total Missoula County payroll of \$653,340.10. The form was returned to the Auditor's Office.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, JULY 12, 1999

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

Payroll Transmittals – The Commissioners signed a Payroll Transmittal for Pay Period 13, with a total Missoula County payroll of \$649,866.97; and a Payroll Transmittal for Pay Period 13-02, with a total Missoula County payroll of \$1,050.00. Both forms were returned to the Auditor's Office.

TUESDAY, JULY 13, 1999

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

Monthly Report – Chair Kennedy examined, approved, and ordered filed the Report of the Sheriff, Douglas Chase, for the month ending June 30, 1999.

ADMINISTRATIVE MEETING

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

Memorandum of Understanding – Chair Kennedy signed a Memorandum of Understanding with UM's Lubrecht Experimental Forest, Montana DNRC, Montana FWP, and the Bureau of Land Management for the purpose of improving water quality in Elk Creek. The MOU was returned to Nancy Anderson at the Bureau of Land Management.

Agreement – The Commissioners signed an Agreement with the Montana Department of Transportation for construction of bicycle and pedestrian facilities along South Avenue using CMAQ funds. Federal funding shall not exceed \$216,450.00, with a County match of 13.42%. The Agreement was returned to Horace Brown, County Surveyor, for further handling.

Other items included:

- 1) The Commissioners approved a request for abatement of a property tax bill and issuance of a corrected tax bill for Robert D. Newman, 5700 Black Fox Trail, Missoula, based on the grounds that the original tax bill was in error. The information was forwarded to Vickie Zeier, Clerk and Recorder/Treasurer, for further handling.
- 2) The Commissioners discussed a request from the University of Montana for right of first refusal on up to four lots in the Missoula Development Park, and determined they needed more information.

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

WEDNESDAY, JULY 14, 1999

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

Audit List – The Commissioners signed the Audit List, dated July 12, 1999, batch numbers 11, 13, 16 and 18, with a grand total of \$155,833.38. The Audit List was returned to the Accounting Department.

Agreement – The Commissioners signed an Agreement with Jensen Paving Company for crushed cover aggregate for the Missoula County Road Department. Total cost is \$60,000.00. Delivery will be made by July 17, 1999. The Agreement was returned to Doreen Culver, Bidding Officer, for further handling.

PUBLIC MEETING – July 14, 1999

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

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$155,833.38. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Bid Award – Voice and Data Service (Detention Facility)

Chair Kennedy had a question on the bid award. An attempt would be made to contact Bob Schieder and this item was tabled until later in today's meeting.

Hearing – Blankenfeld Family Transfer – Postponed from June 30, 1999

Colleen Dowdall, Deputy County Attorney, stated that she had just gotten off the phone with Mr. Blankenfeld and he would be a few minutes late. She suggested going on to the next Family Transfer hearing, then come back to this one when Mr. Blankenfeld arrived.

Chair Kennedy stated that was acceptable.

Hearing – Denning Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 2, COS 4593.

Richard and Christine Denning have submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is 20 acres in size located off Mountain Home Lane. The Dennings propose to create a 10 acre parcel for transfer to their son and daughter-in-law, Scott and Amber Denning. The property is located on the Flathead Indian Reservation and needs to be reviewed by the Confederated Salish and Kootenai Tribe.

The history of the parcel is as follows: 20 acre parcel created by retracement of 20 acre parcels previously created, on COS 4593.

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

Colleen Dowdall stated the fact that this parcel was on the Indian Reservation was not noticed until late in the process and therefore the transfer will need to be reviewed by the Tribal Offices. There is an interlocal agreement that allows the tribe to review all land transactions on the reservation. She requested the Commissioners have the hearing today but delay the decision for no more than 35 days. The tribe has 30 days to review the transfer and she will ask them to expedite the process.

Rick Denning was present and came forward to answer any questions the Commissioners may have.

Chair Kennedy stated this process is different from ordinary subdivision and the Commissioners have to make a judgement as to whether or not this proposal is an attempt to evade subdivision regulations. This allows the Board to ask questions that may be personal in nature.

Commissioner Evans asked if Mr. Denning had any objection to the 30 day delay?

Rick Denning stated he had no problem. His purpose for this family transfer is to give land to his older son to build now and the other half of the property will remain in his name. He plans to give that portion to his other 19-year-old son when he is fit and ready to build a home.

Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed. The decision on this action will be postponed until a response has been received from the Tribes. The decision will be made at the latest on August 18, 1999, possibly sooner. When Colleen Dowdall receives the response from the Tribes, she will schedule the decision.

Hearing: Blankenfeld Family Transfer (Postponed from June 30, 1999)

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as a portion of Tract 12B of COS 4659.

William R. Blankenfeld has submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 20 acres in size located west of Missoula off Moccasin Lane. Mr. Blankenfeld proposes to create five one-acre parcels along Moccasin Lane on the east portion of the property for transfer to his wife, Laura Pritchett, and four daughters, Ciara Blankenfeld, an adult; Tosha Blankenfeld, age 16; Tawni Blankenfeld, age 13; and Shalise Blankenfeld, age 11.

The history of the parcel is as follows: Tract 12 was created as a 35.77 acre tract by COS 1465 in 1978 as an exemption from subdivision review because the tract was greater than 20 acres. Tract 12B is the remainder parcel of COS 4659 filed in 1996 by Jeff Wilson for transfer to his wife, Shoni Card, through the family transfer exemption from subdivision review. This 20 acre portion was approved for Jeff Wilson for creation as the remainder parcel to a division of land pursuant to the family transfer exemption for transfer to his son, Paul Lyman Wilson. That COS has not yet been filed.

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

William R. "Buddy" Blankenfeld was present and came forward to answer any questions the Commissioners may have.

Chair Kennedy reiterated to Mr. Blankenfeld his comments to Mr. Denning about the Family Transfer process. After a briefing this morning, his immediate concern about this transfer was that it looked like a subdivision and might be one. This parcel began a few years ago as one 35.77 acre tract and if this transfer is approved, there will be 8 parcels on the same 35.77 acres. He asked Mr. Blankenfeld if the sale of this land to him was conditioned on approval of this family transfer?

Buddy Blankenfeld stated that was not correct, they had been waiting for the COS to be filed, but the sale is not contingent on the granting of the family transfer. His situation is that his daughters do not live with him, they live with their mother, his ex-wife. His concern is that they have some money that he can give to them so they can go to college if they wish. He went to college later in life and knows the importance of a good education. He would like to see his daughters do that as well. He was shown this process to provide them with this opportunity.

Chair Kennedy asked if this request was denied, would he still purchase the property?

Buddy Blankenfeld stated he would like to, he would like to establish some roots here in Missoula. He will be here for a couple more years. They would like a piece of property they could call their own. There is a home on the land that needs some work before it is livable. There is also a rental on the property. He is acquainted with Jeff Wilson, who knew about his situation and what he wanted to do. Mr. Wilson suggested this as a way to provide for the kids. He would also like to have a couple horses and a few steers. His daughters are coming for a visit in a few weeks and he would like to present the land to them at that time.

Chair Kennedy stated that none of the Commissioners like this law. It creates conditions having to make judgements on what they think and hear, which is hard for them. When this land was originally proposed for division by Jeff Wilson, he said he would use it for grazing. His exception was granted based partly on his testimony on what the use of the land would be. Now, things have changed and he is wanting to sell the land.

Buddy Blankenfeld stated Mr. Wilson's situation has changed, he is looking at buying a ranch in Ronan. Mr. Wilson knew of his situation and presented him with this opportunity to get a piece of property and suggested the family transfer process.

Chair Kennedy stated there was some action that needs to happen on this property before Mr. Blankenfeld can actually purchase it. Mr. Wilson has not yet filed the survey that allows his exemption to pass. Mr. Blankenfeld has a description of property that presumes that land division has been filed, but in fact, it has not taken place yet.

Buddy Blankenfeld stated he did not completely understand the process but he was waiting on a COS for this property.

Chair Kennedy stated there was a larger piece of land someone said they were going to subdivide and give a chunk as a gift and use the rest for pasture land. Subsequent to that, the remaining pasture land is to be sold to Mr. Blankenfeld which he wants to subdivide. Mr. Blankenfeld's subdivision can't happen until the first transaction is complete. It sounded speculative to him.

Buddy Blankenfeld stated he did not know about Mr. Wilson's part of it, waiting for the Certificate of Survey. They have been waiting six months as the state is behind on getting it back to the County.

Chair Kennedy asked Colleen Dowdall what would cause the delay?

Colleen Dowdall stated it would be getting the sanitary restrictions lifted with the State Health Department. It takes a very long time and is usually responsible for these delays in family transfers and subdivisions.

Chair Kennedy stated the time frame was a year or more.

Colleen Dowdall stated it was unknown when it was submitted to the State for lifting of the sanitary restrictions. If there are any problems or issues, it can take in excess of six months to get it through the system.

Chair Kennedy asked if there is denial of getting sanitary restrictions lifted on Mr. Wilson's property, what happens?

Colleen Dowdall stated the certificate cannot be filed. The division of land will not occur. If Mr. Blankenfeld's division is approved, it cannot be accomplished until the other one is filed. Mr. Blankenfeld cannot purchase the property until that COS is filed. When the state gets it completed and it is filed, then Mr. Blankenfeld can purchase the property and use the family transfer to divide the property. He would have to do his own survey then. The process cannot be skipped. There will have to be two surveys done and filed. In the event the property is not approved for filing the COS, then Mr. Blankenfeld sale will not go through, because there will not be a 20 acre parcel to purchase.

Buddy Blankenfeld asked if the original COS for the 24 acres goes through, will he need to get another one?

Colleen Dowdall stated the 24 acre COS has been filed. The one that transfers 4 acres to Mr. Wilson's son and keeps 20 acres for Mr. Wilson has not been filed. Mr. Wilson is having that survey done. She understands the survey is completed but the sanitary restrictions are still in process in Helena. When that is done, it will be filed. If Mr. Blankenfeld wants to divide the 20 acres as proposed, and he receives permission to do that, he will have to hire a surveyor to divide it into those parcels.

Commissioner Evans stated that in the past, the Commissioners have approved land splits that look similar to this for similar reasons. Generally they were done with a trust being established for the children. Is that the case in this instance and has that been explained to Mr. Blankenfeld?

Colleen Dowdall stated she has explained that to Mr. Blankenfeld and he understands it fully. He intends to put the land in trust under the Uniform Gifts to Minors Act and act as custodian of the land on behalf of the children.

Chair Kennedy asked if Mr. Blankenfeld was aware he was kind of being dangled, he was not in control. His sale is beyond the Board's control and beyond his control.

Buddy Blankenfeld stated it sounded like it is contingent on this COS coming through.

Chair Kennedy stated that was correct. The Board did not know, nor have any control over, when that will or if that will, occur.

Buddy Blankenfeld stated his understanding was that it will happen any day. He assumed that was for the original 24 acre parcel. After that another survey for the 20 acres will have to be conducted, was that correct?

Colleen Dowdall stated the COS they are waiting for will create the 20 acre parcel and the 4 acre parcel.

Buddy Blankenfeld stated that if that one goes through, then he is okay.

Colleen Dowdall stated he could then purchase his 20 acres.

Buddy Blankenfeld stated then he would have to re-survey for his division.

Colleen Dowdall stated if the Commissioner grant him permission to do the division, he would have to do another survey, before the family transfer could be final.

Commissioner Evans stated Moccasin Lane raised a red flag with her, because of its access onto Mullan Road. She asked Horace Brown if this land was near the intersection of concern.

Horace Brown stated it was at the other end of Moccasin Lane.

Commissioner Evans asked Mr. Blankenfeld if he intended to give this to his children.

Buddy Blankenfeld stated yes.

Commissioner Evans stated that was what the Board had to determine. If they are convinced that is what he is going to do, the law allows him to do that. If they feel this is a rouse to get five pieces of land and avoid subdivision, it should be denied. They need to make sure he really wants to give this to his children.

Buddy Blankenfeld stated that would be 4 acres. One acre would go to his wife, the one with the rental property, which she would manage.

Commissioner Carey stated his understanding that the money for the children's education would come from selling the land.

Buddy Blankenfeld stated he would like to see them have something to apply toward college. He would be the person watching over the trust until they were of age to make a decision. He would be very happy if they would like to build on the land. That may not happen, but it would be great. The main intent is to use the land for education.

Commissioner Carey stated that during the previous briefing on this matter, it didn't seem as if Mr. Blankenfeld had been properly briefed on the situation the Commissioners find themselves in, having to determine whether or not this is a deliberate attempt to evade subdivision review. Mr. Blankenfeld wishes to purchase a piece of land and divide it and give a piece to his kids. That triggers the question for the Board of whether or not it will end up as a subdivision that hasn't been properly reviewed and meets standards.

Buddy Blankenfeld stated the process is very confusing. It seems like it should be very simple to make a family transfer that is within the law, but it gets down to if's and but's and when's and why's. He understood the Commissioners position but was disappointed. It seems that if a person wishes to establish roots, there is a hostile environment encountered.

Commissioner Evans stated that if this transfer is granted, there is no guarantee the sanitary restrictions would be lifted and that anyone would be able to build on that land.

Buddy Blankenfeld stated that was what has to come in on the one that Mr. Wilson owns.

Commissioner Evans stated that would be on the one that Mr. Wilson owns. If he is granted this transfer and gives the land to his daughters and one wants to sell to someone who then wishes to build a house, there is no guarantee the health department will allow a septic system on that land. The sewer may be coming out to the area which would eliminate some problems, but again there is no guarantee when or if that would happen. This land may or may not be able to be built on. The soils in the area are not conducive to perking for septic systems. She wanted to make sure he was aware of that situation.

Chair Kennedy stated that would be true even if he did not subdivide. If he purchased the 20 acres and did not go through with the subdivision, he would still not be guaranteed of a building site as it still has to go through the review process. There are law

suits pending from other property in that area regarding failed septic systems. There are many reasons to warn people they may be buying land that cannot be developed.

Buddy Blankenfeld asked what the current regulations were regarding how many septs could be on an acre of land? Was it one per acre?

Chair Kennedy stated that if septic tanks are allowed, the minimum acreage allowed is one acre. That doesn't guarantee there will be any.

Colleen Dowdall stated the Commissioners were telling Mr. Blankenfeld that when subdivision review is done, it is reviewed for a lot more things so it is more likely evident it is developable. When it doesn't undergo subdivision review, a letter is sent stating it has not undergone review for access, fire service, police service, zoning, comprehensive plan, etc. The parcel may be created because it isn't an attempt to evade subdivision review, but it does not guarantee any of the other things.

Buddy Blankenfeld stated that if one of those 1-acre lots was eventually sold, he would have to go through this whole process again.

Colleen Dowdall stated that was not correct. To get his COS filed, he would have to get his sanitary restrictions lifted. He would be going through the state again for the 1-acre parcels if they are created.

Buddy Blankenfeld asked if that would entail the septic. He was very confused and frustrated as he has never attempted this before.

Michael Sehestedt stated to protect the public health and safety, every division of land creating a parcel of less than 20 acres is subjected to review by the State Health Department. They do a general review and establish whether it is possible to install a septic system on that property, generally speaking. Issues involved are separation between drainfield and ground water, percolation rates and availability of a replacement drainfield site in case the first one fails. The state gives approval, generally speaking, for the possibility of a septic being installed and lift sanitary restrictions. When the time comes to actually install a septic system, the specific site proposed will be reviewed by the local Health Department and they will determine whether or not in fact that site meets both State and County standards for separation from ground water, permeability of soils and existence of a replacement drainfield site, separation laterally from existing wells, separation from water courses, etc. It is a fairly routine process. One of the things that happens during subdivision review is that those sites are tentatively identified and specific testing is conducted on those sites before the subdivision passes and has sanitary restrictions lifted. The Board wants to make clear that this family transfer process is a review only of whether or not there is an attempt to evade the subdivision act by using the Certificate of Survey process. If it is found there is no attempt to evade, it is a legitimate use of the exception, the Board will grant authorization and the applicant will create the parcels. The applicant is told up front that the parcels have not been looked at for any of these sanitary issues, it is their problem. The parcels have not been looked at for zoning compliance, it is the applicant's problem. The parcels have not been looked at for fire department access, police protection, affordability of installing electric power, potable water, etc. All of those issues are the applicant's problem. In this case, this is particularly curious because from Mr. Blankenfeld can obtain title to this property, the person who proposes to sell it has to at least get through the State's review and lifting of sanitary restrictions so the COS can be filed to describe the property he wants to convey to Mr. Blankenfeld. Once Mr. Blankenfeld has good title and the Commissioners have found that this is not for the purpose of evading subdivision review, and the parcel can be created, then he will need to get a survey and go back to the State and get the preliminary review. If the State says yes, then Mr. Blankenfeld can file his Certificate of Survey. As long as it remains bare ground, nothing happens. When the time comes to sell it or build on it, then the review will be done to see if this particular site meets state and local standards for water, power, access, etc. All of those issues are his problem, the County makes no representations as to any of them. Because there is some confusion as to the process, he wanted to make it perfectly clear to Mr. Blankenfeld what he was and was not getting. If the Commissioners find there is no evasion of the subdivision act, Mr. Blankenfeld will receive authorization to create these parcels. It does not come with any guarantee they will be good for anything but pasture land or if he will ever be able to do anything with them. All of those problems are his or a future purchasers.

Commissioner Carey understood the current owner got his exemption by agreeing to maintain it in agriculture.

Commissioner Evans stated that was not correct. He said he was going to do that, but there was no signed agreement. It was his intent at the time.

Commissioner Carey stated the exemption was granted irrespective of what use he would eventually make of the land.

Buddy Blankenfeld stated that Mr. Wilson's situation had changed. He was looking at purchasing a ranch in Ronan.

Commissioner Carey stated he felt there would be a subdivision without any review. From one lot there would now be eight.

Buddy Blankenfeld stated his request was being attached to Mr. Wilson, but he has no concern with what he is doing with the other land. He has concern with the 20 acres he wants to purchase and what he wants to do with that land, which he believed was within his right to do.

Commissioner Carey stated to do a subdivision without review was not his understanding.

Buddy Blankenfeld stated this was being called a subdivision which was not his intent.

Michael Sehestedt stated technically and legally, any division of property into parcels less than 160 acres is a subdivision. This is a subdivision that is exempted from review by the fact it is proposed to use the gift or sale to immediate family member. Technically, any division of property is a subdivision.

Buddy Blankenfeld stated that subdivision usually connotes someone will build streets and houses and sell the houses to other people. That is what it sounds like the Commissioners are saying he wants to do. That is not his intent.

Commissioner Evans stated that is why this is such a difficult process for them, because technically and legally to her, Mr. Blankenfeld has the right to give this land to his children. However, the configuration certainly looks like a subdivision as the Commissioners see them all the time. It would be nice to have the ability to review every split of land for roads and all the other important things, but the law specifically gives an exemption so that once in every county, a person can give to each child a

piece of land once in their life. The law allows that and unless she could find a legitimate reason to take away the legal right to do that, she was inclined to support it.

Chair Kennedy stated the reason there are subdivision regulations is not to create any barriers for people who want to sell or subdivide property, it is for the protection of everybody. As Michael Sehestedt mentioned, the public safety and welfare includes the buyer and seller of the land as well. There are enormous benefits to people when they go through subdivision review, there are lots of questions that get answered for potential buyers and sellers of the land. Those protections don't exist unless that review does in fact happen. He asked Mr. Blankenfeld why he would not go through subdivision review?

Buddy Blankenfeld stated it sounded like the Commissioners were automatically assuming this was a subdivision and want him to go through that review when he is asking for the simple process of a family transfer. He does not want to put a subdivision in there, it will be several years before his daughters would be at the point where they would be able to use the property anyway.

Chair Kennedy stated the recommended land use in that area was 1 dwelling unit per 40 acres in the land use plan. If it is 1 per 40, this division is six parcels on a total of twenty acres, so only one half of one house would be recommended according to the land use in that area. This conflicts with land use. The legislature saw it important to enact this law but at the same time it creates these issues for the Board when they are wanting to do the very best by all the citizens in Missoula County to make sure planning is done properly so everyone benefits. It is difficult to judge and look at this in any other way. Those rectangular lots look like a subdivision requiring infrastructure and all the rest.

Commissioner Evans felt Chair Kennedy was wrong on the land use assumptions, there were other developments in the area that are not 1 per 40.

Nancy Heil, Office of Planning and Grants, stated that recently there was a large zoning and subdivision that happened in that area. The land immediately off Moccasin Lane is unzoned and does have a comp plan designation of 1 per 40.

Commissioner Evans stated the comp plan does not fit into the COS process, it has no bearing on it whatsoever.

Buddy Blankenfeld stated that one of his proposed lots already has a rental on it. The Commissioners are also assuming that if the acreage is every sold, someone would put a house on it. They are predisposed that this is going to be a subdivision, that if the land is sold, it would be to put a house on. That has not been established at this point. It is a few years down the road.

Commissioner Carey stated that when Mr. Blankenfeld says subdivision, he means streets and all the rest. The Commissioners are talking about land being divided. Normally, when these are received, it is from a professional developer who shows how it will be developed. He was concerned there were a lot of questions that Mr. Blankenfeld did not know yet to ask about this process.

Buddy Blankenfeld stated Commissioner Carey was inclined to deny this for his own protection.

Commissioner Carey stated it would not be for that reason, but it may well be that in a year or two, he, or someone else, may come in requesting variances to do a development there. The overall effect is developing land that isn't suitable or benefits the whole County.

Buddy Blankenfeld stated other homes are being built out there. That is not his intention nor purpose, he did not know what would happen in five years. The sewer could be installed by then making septic systems not an issue.

Chair Kennedy stated Mr. Blankenfeld has previously said his purchase of the land was not contingent on this subdivision and his children are young enough that it would be a few years before anything happened and he wanted to provide for their future. He asked if there was an urgency to doing this at all. Why didn't Mr. Blankenfeld just buy the land. Perhaps in the future he would have a better feeling about how the land might get used and he could propose something a bit more solid.

Buddy Blankenfeld stated he has been going through this process for six months and he would like a decision now. His daughters are coming for a visit soon for the first time since he has lived here and he would like to present the land to them. He would like to show them the land and tell them that it would be theirs and maybe give them an incentive to start thinking about what they could do with it.

Commissioner Evans stated she did not feel there was any legal reason to deny this transfer.

Chair Kennedy asked if Mr. Blankenfeld intended to build a house there?

Buddy Blankenfeld stated there is a house there already that needs some work before it can be occupied.

Chair Kennedy asked counsel about a subdivision when a mortgage is involved?

Colleen Dowdall stated the exemption for a mortgage parcel is for a construction mortgage in the event someone is going to build a house and they need construction financing. A portion of the land is broken off so the entire property is not encumbered. It is for construction only.

Commissioner Carey asked counsel about the potential legal liabilities to the County. Could they in effect have allowed an evasion of subdivision review by allowing this sort of thing. Could this become a common practice? Someone could come in one year and say there would be 20 acres in agricultural use, then circumstances change and a proposal such as this is presented.

Colleen Dowdall stated the process is designed to insure the Board knows what the history of the parcel is, which is why the report and research is done. The Commissioners have that information before they make their decision. She said the recent history of this particular parcel is not often seen.

Commissioner Evans stated in the case of the Meadows of Baron O'Keefe enough of that was done that it became clear to the Commissioners and County Attorney's Office that it was a deliberate deception. The County sued and won. If the Board finds that someone deliberately deceives them, they have the power to sue.

Colleen Dowdall stated in the O'Keefe case, some of the parcels had already been created and the result of the law suit was some of them were vacated. This happened in the mid-1980s.

Michael Sehestedt stated part of the reason there were not more of those case was this review process. The reason it is reviewed and restricted is that other people, who sounded perfectly sincere, have lied, cheated and used this exemption.

Buddy Blankenfelf stated he hoped Mr. Sehestedt was not assuming that was him.

Michael Sehestedt stated no. That is why this review process exists and why they are trying to satisfy themselves that this division, which looks exactly like a summary subdivision and would have exactly the same effect, in terms of creating five additional building sites that will eventually be built on, is not that. He felt it extremely unlikely these lots would ever be reassembled in the future. There would be a minimum of six houses on these 20 acres, at some point in the future. When that happens, it will produce traffic, sewage, a demand for services. The cause of the distress today is there has been no review as to how those impacts could be addressed, how the problems with Moccasin Lane will be addressed. There has been enough experience over the years in dealing with unreviewed tract subdivision and unreviewed use of exemptions to know that problems with dust, water or fire access is suddenly, in the eyes of subsequent purchasers, somehow the responsibility of the County. Then all taxpayers are called on to address those issues. That does not take away the fact that the legislature has created this exemption. The Board wants to make real sure they are not being had, that the person that is using the exemption knows the limitations of this review. Any subsequent purchasers would be referred back to the applicant.

Chair Kennedy stated that Mr. Blankenfelf is involved in this now because of his transfer request. He was not involved with other actions that happened in the past.

Buddy Blankenfelf stated because of what has happened in the past, he is paying the penalty, that what it seems like.

Chair Kennedy stated he was sorry Mr. Blankenfelf felt that way.

Buddy Blankenfelf stated this felt more like an inquisition than a request for a family transfer.

Chair Kennedy stated he understood and it was the unfortunate part of what the law allows when this process is requested.

Commissioner Evans stated that when she makes her motion she will allow these transfers and that a family trust be formed and the land actually be put in the names of the children.

Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the family transfer for William Blankenfelf to his children and his wife, as there does not appear to be any attempt to evade the subdivision review and that this approval is contingent upon a trust being established and the land being put in the children's' name, with William Blankenfelf as trustee. All proceeds from the land shall be for the benefit of the children.

Commissioner Carey stated he was not prepared to second the motion. He agreed with what the County Attorney said, this will end up a subdivision, with 5 lots which will sooner or later be built on, not necessarily by Mr. Blankenfelf or his children. It will happen and will happen without review. He did not feel this was good public policy. If the Board does business this way, over time the quality of life wanted will suffer. He hoped that not accepting this motion did not preclude the purchase of the property, it just precludes this subdivision at this time.

Commissioner Evans pointed out that the law allows Mr. Blankenfelf to split this land. While the Board may not like it, it is still the law.

Chair Kennedy asked counsel about the options. Having no second to the motion was tantamount to a denial, unless the motion is withdrawn. What happens next? If the motion gets withdrawn and there is a motion to deny, what happens? If the motion is withdrawn and there is no action, what happens?

Colleen Dowdall stated the motion would die if it did not have a second.

Chair Kennedy asked what the implication to the proposer would be?

Colleen Dowdall stated at that point, there has been no motion made and the Board has to take action.

Chair Kennedy asked if there was a restriction on when the applicant can reapply for this?

Colleen Dowdall stated there was not.

Chair Kennedy asked what would happen if there was a denial?

Colleen Dowdall stated there was no restriction on when they could reapply, the Board would be denying the request because with the information available, it has been found there is an attempt to evade subdivision review.

Buddy Blankenfelf asked if the Board denies his request, would there be any point in the future of it being approved?

Commissioner Evans stated his other alternative would be to go through subdivision review.

Chair Kennedy stated that during subdivision review, there has to be some way to identify the lots and a survey still has to be done. Subdivision review can be done with or without engineering counsel. There is a cost for the process and it provides protection for the developer and any purchaser of a lot.

Commissioner Evans asked that Chair Kennedy and Commissioner Carey state for the record their reasons for thinking Mr. Blankenfelf is deliberately trying to evade the subdivision act, otherwise he has every legal right to have this subdivision. The findings need to show reasons why they felt he is evading the subdivision act.

Commissioner Carey stated he did not think there was a deliberate attempt to evade the subdivision act, but in effect that is what might well happen.



Commissioner Evans stated that happens all the time.

Colleen Dowdall stated there is a distinction between evade and avoid, it's a fine distinction. This is an uncomfortable decision where the Board has to try to determine the intent of the applicant. There is a quality of decision that favors his ability to do this, but the law says the applicant may divide property by use of the family transfer exemption unless it is an attempt to evade subdivision review. That is all the guidelines available except for guidance by the Attorney General in case law stating the Board can determine what the intent is by looking at the history of the parcel and the history of the applicant. In this case, the applicant has no history of dividing land in Missoula County through use of exemptions. The history of the land can then be looked at, or the history of the parcel, to see whether this is a continuation of an attempt to evade subdivision review.

Commissioner Evans stated this is one of those laws, that while it may not be liked, it is the law. If this is denied there needs to be legitimate reasons based on the law which state the Board believes Mr. Blankenfeld is deliberately trying to evade the subdivision act. If there are not findings that say that, while the law may not be liked, it is still the law. Until the law is changed, the Board has an obligation to observe it.

Buddy Blankenfeld stated Commissioner Carey's reasoning was disappointing, it seemed like regardless of his intentions, he is saying "such and such" will happen, he knows best. Therefore, he will not allow this. He felt Commissioner Carey could see into the future. He felt it was being said that regardless of what he wanted to do, this will happen, so they don't trust what he wants to do with the land.

Commissioner Carey stated he was sorry if he had given Mr. Blankenfeld that impression. He is seeing a subdivision of land. It would not matter who was doing it or why, that is what he sees, a parcel of land that will be divided into 5 separate lots. Sooner or later those newly created pieces of property will be built upon.

Buddy Blankenfeld asked how Commissioner Carey could be sure? He was really biasing his judgment. It is also further being biased by what the previous landowner has done with the property.

Michael Sehestedt stated the representation made was that the children would build on the parcels or sell them to finance their college education. Nobody buys a 1-acre ranch. The sale would obviously be for a building site.

Commissioner Evans stated the law still allows this to be done.

Colleen Dowdall stated the presumption the lots will be built upon is furthered by the law that requires sanitary restrictions be lifted if a parcel less than 20 acres in size is created, so it can be used for residential purposes. It is not an assumption, it is a fact. She wanted to make it clear the land use in the area is 1 dwelling per 40 acres, so if it went through subdivision review, it would not guaranteed there could be six parcels on this tract of land.

Chair Kennedy stated that was not an automatic preclusion, this does happen in other areas.

Commissioner Carey stated he did not have any interest in creating more work for the courts. Should this be challenged legally, has the Board violated the law as Commissioner Evans said.

Commissioner Evans stated she was not suggesting this should be challenged in court, she is saying the Board should abide by the law because it exists, not because someone can overturn the decision by taking it to court. That is not fair.

Chair Kennedy stated the legislature created this law and process and the condition under which the Board of County Commissioners are to make judgment as to whether or not this law applies and to make a decision as to whether or not this should be allowed. The legislature allowed the Board to have some considered judgment based on what they believe necessary to make a decision.

Commissioner Evans stated then findings need to be in the record as to why it is believed Mr. Blankenfeld is trying to evade the subdivision act, based on what he has said today.

Colleen Dowdall stated the simplest way to look at this, in order to determine the intent of Mr. Blankenfeld, the Board has to look at the history of the parcel and the history of the person. That is the only guidance given in how to determine someone's intent. In this case, the history of the parcel is what the Board has. She added that Nancy Heil, Office of Planning and Grants, handed her a note that indicated that OPG has had pre-applications with Mr. Wilson for a subdivision.

Nancy Heil stated she believed it was for this particular parcel, but without seeing the legal description or maps, she could not answer conclusively. Mr. Wilson has asked OPG about the possibility and had discussions several months ago. He indicated he was looking to purchase a ranch in Ronan. She did not know if this fact had any bearing on this hearing, but she wanted to make the Commissioners aware of it.

Colleen Dowdall asked if Mr. Wilson had anything specific?

Nancy Heil stated he did, but without her notes she would hesitate to guess for the public record, what it was in terms of actual parcels. But Mr. Wilson did come to OPG with the question.

Colleen Dowdall suggested perhaps delaying this action until the Board has had an opportunity to look at Mr. Wilson's pre-application proposal. She wanted to know if it was on this parcel of land and what it looked like.

Commissioner Evans suggested getting the file now and ask Mr. Blankenfeld to wait. She saw no reason to postpone action on this.

Chair Kennedy asked Mr. Blankenfeld why he would not want to go through subdivision?

Buddy Blankenfeld stated it would be a huge expense to do that and he is not planning on building a subdivision. His understanding was that when you went through subdivision review, you were a developer planning to build a subdivision. That is not his intent right now. If he was willing to invest the money and the return would be that he would get the money for doing it, it might be worth doing. That is not his intent and did not see why he would be required to do that. He is just trying to get a family transfer.

Chair Kennedy stated counsel made a good point about the investigation of Mr. Wilson's requests. There is not time to do it now. He suggested going on with the agenda if Mr. Blankenfled was willing to sit through it, or the matter could be delayed.

Buddy Blankenfled stated he needed to get back to work.

Colleen Dowdall stated if Mr. Blankenfled preferred to have a decision today, the Board can move through the process and make a decision. In the event the decision is adverse to his application, it would not be difficult to revisit the request. If there was more evidence that persuaded a change in decision, it could be brought before the Board very easily.

Commissioner Carey is not saying Mr. Blankenfled is trying to evade the subdivision law. Legally, if that finding cannot be made, even though they can see a subdivision coming, are there still grounds to deny the transfer?

Colleen Dowdall stated the Board had to be able to find that it is an attempt to evade subdivision review. If they don't have that belief, she could not think of a way they could vote to deny this transfer.

Commissioner Evans stated her motion was still on the floor.

Commissioner Carey seconded the motion.

Chair Kennedy stated that Mr. Blankenfled had been tossed back and forth and apologized for the bad law the legislature imposed on the Board. He hoped Mr. Blankenfled would leave knowing that the Board takes these matters very seriously, on the behalf of the general taxpayers of Missoula County. There is a land use plan in that area that suggested the best use is 1 dwelling per 40 acres. There has been a systematic subdivision of that land that will leave that land with eight parcels instead of one. It is likely this will become a subdivision with houses if sanitary restriction are lifted or sewers come to the area. Another downside to everyone is that all the costs associated with a subdivision that Michael Sehestedt related are consequences that can't be circumvented by this subdivision of land. That is a genuine disservice to everyone in Missoula County and to Mr. Blankenfled and his children and potential buyers of the land. He then called the question.

The motion carried on a vote of 2-1 (Chair Kennedy opposed).

Commissioner Evans stated she agreed with Chair Kennedy that this is bad law. It is a rotten part of their job, but it is the law and until the legislature sees fit to change it, that is the law, and the reason she can't find there is an attempt to evade the subdivision law. Mr. Blankenfled seems honest and she has no reason to disbelieve him.

Chair Kennedy stated no one was even suggesting otherwise.

Buddy Blankenfled stated he appreciated that.

Chair Kennedy stated Mr. Blankenfled will now receive a letter.

Commissioner Carey stated he felt it was a bad law as well. He voted in favor of the transfer because of the legal advice from counsel. He just wanted Mr. Blankenfled to understand it was from a public policy perspective. If everyone is allowed to do developments the way this one will eventually get done, growth will not be the way it should be in terms of protecting water and air quality and those types of things. It is not what Mr. Blankenfled personally hoped to accomplish with his investment. It is just not a good way to grow.

Commissioner Evans reminded Mr. Blankenfled that her motion requires the trust be created and actually putting the land in the children's names.

Buddy Blankenfled stated he understood that.

Chair Kennedy stated Mr. Blankenfled will receive a letter explaining today's action and what is and is not included in the approval. Some of the items mentioned by Michael Sehestedt will be in that letter, that he still have to go through other processes if he wishes to do anything else to that land.

Buddy Blankenfled stated he understood that.

Bid Award – Voice and Data Services (Detention Facility)

This is a request to award a bid for Voice and Data Services for the new Detention Facility. The bid is for horizontal wire/fiber optic cable for phone system and computer networking at the center (for pulling and installing the cable). The work was done separately from the main construction contract because a cost savings would be realized.

Bid were advertised and received from: Valley Electric in the amount of \$46,450.00; American Eagle in the amount of \$48,250.00; and Talco Electric in the amount of \$37,250.00.

Bob Schieder of the Detention Facility recommended after discussion with the engineer that the bid be awarded to Talco Electric in the amount of \$37,250.00 as they were the lowest and best qualified to do the project.

Chair Kennedy stated a response had been received from Bob Schieder, however it did not fully answer his question. The question was if the money was budgeted for.

Commissioner Evans moved that the Board of County Commissioners approved the award of the bid for Voice and Data Services for the Detention Facility to Talco Electric in the amount of \$37,250.00 as they were the lowest and best bid, contingent upon the money being allocated in the jail budget. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

After the Public Meeting, Bob Schieder was contacted to verify that the money was budgeted for. He stated the money was included in the budget and therefore the bid was awarded to Talco Electric.

Hearing: Petition to Vacate GLO Road (Kittleman) – Potomac Area

Virginia Kittleman, the petitioner, presented the report.

This is a petition to abandon "GLO road located approximately from the center of Union Creek to the southerly half of Section 11 in Section 11 and 14, Township 13 North and Range 16 West, P.M.M., Missoula County, Montana." The reasons for the request are as follows:

1. It is very unlikely this road ever existed as drawn on the map, given the topography involved.
2. A road in this location would serve no logical purpose, and would adversely affect property values.

Virginia Kittleman stated they had been given some land in Potomac as a gift and discovered there is a GLO road through some of that property. They are petitioning the road be removed. There is no evidence the road ever existed. The neighbors around them have no knowledge that this road ever existed. That is the reason for their request.

Chair Kennedy stated before a decision can be made on a vacation request the site must be inspected by one Commissioner and the County Surveyor and they will bring a recommendation back to the Board on the action. The Commissioners can hear testimony today and ask the County Surveyor if he has any knowledge about the road.

Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans asked for a least 2 weeks before the decision as their schedule was very full next week.

Chair Kennedy asked if that created a problem for the Kittlemans.

Virginia Kittleman stated it did not.

Chair Kennedy asked if Horace Brown had any knowledge of this road?

Horace Brown stated he knew the location of where this road was supposed to be. It was probably there in the late 1800's, but it is not there anymore.

Chair Kennedy stated the description of the road was very sketchy, was it good enough?

Michael Sehestedt stated he believed it was as the map was referenced.

Chair Kennedy stated if this was true for this portion of the road, would it be true for all of that particular GLO road? Would it better to abandon all of it rather than this small portion?

Horace Brown stated some of it is used as a County road.

Michael Sehestedt stated this was probably a connector road. He asked Horace Brown to show where the road was used.

Horace Brown stated the part of the road indicated is not used. However, the GLO road extends further than that and the County road is part of the GLO road in that area.

Chair Kennedy stated then they would act only on this petition. The decision will be made on August 4, 1999 and between now and then one Commissioner and the County Surveyor will conduct a site inspection.

Virginia Kittleman asked if they needed to be present on August 4, 1999 for the decision.

Chair Kennedy stated they did not need to be present, but they would receive a letter on the Board's decision.

Michael Sehestedt stated that if the decision after inspection was not to vacate the road, and the Kittlemans were not present, they would be notified and the decision would be postponed for an additional week.

Consideration: Akin Acres (2 lot subdivision) – Jette Road southeast of Condon

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

Robert and Betty Akin are requesting approval of a boundary line relocation and subdivision of a 23.35 acre parcel into two lots, 20.39 and 2.96 acres in size. There is one residence currently on the property located along Jette Road, about 4 miles south of Condon. The existing residence was constructed across the northern property boundary on Plum Creek land which is the reason for the boundary line relocation. There are about .14 acres that would be transferred to the Akins' ownership.

The southern portion of the property is relatively level and consists of a meadow and some riparian areas. A home, barn, shed and the proposed homesite are located on a bench above this area.

The applicants propose development covenants that address wildlife interactions, wildland/residential interface standards and riparian management. The property is unzoned. The Swan Valley/Condon Comprehensive Plan recommends rural low density residential land use at an overall land use of 1 dwelling unit per 10 acres. The overall density for the proposal is 1 dwelling unit per 11.7 acres.

Access for the subdivision is provided via Highway 83 to Jette Road. Jette Road serves about 8 residences including a guest lodge. It is located within a 60 foot public right-of-way that extends north of the property onto the Plum Creek land. There are some County Attorney opinions attached to the staff report regarding County right-of-way.

There is a variance request from the requirement that the parcel not be split by that right-of-way. Staff is recommending approval of that variance request. Jette Road has a gravel surface with a width that varies from 16 to 18 feet, with 1 to 2 foot shoulders in some locations. It is County maintained for 0.4 mile from Highway 83 and privately maintained for the rest of the way to the existing homesite. There is also a variance request for road width for the off-site portion of Jette Road and staff is

recommending approval of that variance request. The on-site portion of Jette Road, which functions as a driveway serving the proposed subdivision, goes up to a bench and exceeds a 10% grade in the northern portion of the property. Also the new home on Lot 2 will be served by an existing driveway that currently goes to a barn on the property. Part of the grade for that driveway is about 11.7%, for about 75 feet. There is a variance request for the grade of those driveways. Staff is recommending approval of that variance request. A letter has been received from the Swan Valley Volunteer Fire Department that said they would be able to access the site and that the existing turnarounds and grades meet their needs in term of getting equipment to the homesites. There is another variance request for pedestrian walkways in this area and staff is recommending approval of that variance request as well.

Barber Creek runs through the southwest portion of the property. There is a pond located west of Barber Creek with an inlet and outlet to the creek. The proposed plat shows the boundaries of a riparian resource area as 50 feet on either side of the center line of this creek. There is also an open meadow area which includes some scattered trees and areas of cattails, rushes and grasses. That is shown as a no-build zone on the plat. Staff has recommended that open meadow also be included in the riparian management plan, but it be described as a different zone than the riparian area along the creek, so the uses permitted in the open meadow may be different from the uses permitted along the creek.

Fish, Wildlife & Parks stated in their comment letter that within a 5 mile radius of the subdivision there have been quite a few occurrences of encounters between people and black bears, grizzly bears and mountain lions. Also they noted that transient wolves have dispersed into the area and they may occur in the vicinity of the subdivision if they become permanently established there. They recommended some homeowner covenants stipulating that residents follows the recommendations in their brochures, "Living with Grizzlies" and "Living with Mountain Lions." That has been included as a staff recommendation to be included in the development covenant.

There are 10 conditions of approval. A portion of the Swan River Floodplain, which comes up partially along Butler Creek on the property, needs to be shown on the final plat. Staff is recommending approval of Akin Acres Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report.

Ron Milam, DJ&A, developer's representative, was present. He stated he is representing Bob and Betty Akin, the owners of the property, and the prospective buyers, Carl and Kathy Talbot. He thanked staff for their assistance and they are in full agreement with the staff report.

Chair Kennedy asked for public comment. There being none, the public comment section was closed.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-3(1)(D)(2) of the Missoula County Subdivision Regulations that states that no single lot shall be divided by an existing right-of-way; approve the variance request from Section 3-2(6) for the on-site portion of Jette Road, the driveway serving the existing home and the existing driveway that will serve the new lot, to vary from the required grade to the existing grade; approve the variance request from Section 3-2(2) for the off-site portion of Jette Road to vary from the required 24 foot width to the existing surface width; and approve the variance request from Section 3-2(5) to not provide sidewalks or pedestrian walkways in the subdivision, based on the findings of fact set forth in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve Akin Acres Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. Commissioner Carey seconded the motion.

Chair Kennedy stated he would probably support the subdivision. He commented that anytime humans invade a wild area it invades some other living being's space. In this case it would be the wildlife in the area. Even though staff feels that problem has been mitigated by conditions, anytime a home is build and invaded that territory, an unmitigable thing has been done. What will happen as a result of this is there will be conflicts between wildlife and humans. The loser is likely to be the wildlife. The wildlife is some of the reasons why people move to these areas. It brings to attention the real dilemma of living in the west. This dilemma happens inside the city of Missoula as well as in the outlying areas of the County. This happens because there does not appear to be a way for humans and animals to peacefully coexist. To say this problem has been mitigate isn't true. He did not know how to deal with it. He then called the question.

The motion carried on a vote of 3-0.

Commissioner Evans pointed out they would be living in an wildlife/residential area and the brochures are distributed to help keep the residents safe. She reminded the homeowners to be careful to protect themselves and the animals as well.

Akin Acres Conditions of Approval:

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

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for improvements to Jette Road, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners." *Subdivision Regulations Article 3-2 and County Surveyor recommendation.*

2. The plat shall indicate that Jette Road is a public right-of-way, subject to County Surveyor's Office approval. *Subdivision Regulations Article 5-2 and County Surveyor recommendation.*
3. Grading and drainage plans shall be approved by the County Surveyor's Office prior to plat filing. *Subdivision Regulations Article 3-4 and County Surveyor recommendation.*
4. The plat shall show the floodplain boundaries of the Swan River. Slopes greater than 25% and areas of riparian resource shall be shown as no-build areas. *Subdivision Regulations Article 3-1(2), 4-2(5)(D)(6).*
5. The Riparian Resource Management Plan shall be amended to include the open meadow with prohibited and permitted uses defined. An attachment to the Plan shall show the boundaries of the riparian resource areas. The Plan shall be approved by OPG prior to plat filing. *Subdivision Regulations Article 3-13 and staff recommendation.*

6. A driveway maintenance agreement shall be approved by the County Attorney's Office prior to plat filing for the portion of the driveway across Lot 1 and the shared portion of Jette Road on Lot 1. *Subdivision Regulations Article 3-2(1)(H) and staff recommendation.*
7. The applicant shall provide written documentation that the Swan Valley Volunteer Fire Company approves the driveway designs and water supply and can provide year round emergency access to the property prior to plat filing. The development covenant shall include provision for house numbering. *Subdivision Regulations Article 3-2(6)(E), 3-7(2), 3-2(2)(G) and staff recommendation.*
8. A Revegetation Plan for Disturbed Sites shall be approved by the Missoula County Weed Board prior to plat filing. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*
9. The development covenant shall be amended prior to plat filing to state that the MFWP brochures "Living with Grizzlies" and "Living with Mountain Lions" and "Managing Private Land in Swan Valley Linkage Zones for Grizzly Bears and Other Wildlife" by the Swan Valley Linkage Zone Working Group shall be distributed to all lot owners and recommendations followed. Lot owners shall be informed that within a five mile radius there have been numerous occurrences, sightings, and some significant problem encounters between people, black bears, grizzly bears, and mountain lions. *Subdivision Regulations Article 3-1(2), 4-1(12) and Montana Fish, Wildlife, and Parks recommendation.*
10. The plat shall include the following statement:

"The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water, or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair, and removal of their lines and other facilities, in, over, under, and across each area designated on this plat as "Utility Easement" to have and to hold forever." *Subdivision Regulations Article 3-5(2).*

There being no further business to come before the Board, the Commissioners were in recess at 2:55 p.m.

THURSDAY, JULY 15, 1999

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

Audit List -- Commissioners Evans and Kennedy signed the Audit List, dated July 14, 1999, batch numbers 20, 21, 23, 25 and 26, with a grand total of \$971,541.91. The Audit List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

- 1) The Commissioners approved a proposed contract with Woodmont Real Estate Corporation for purchase of the old County Shops site. Offer was for \$2,200,000.00. Buyer's response is required by July 30, 1999.

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

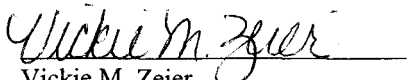
FRIDAY, JULY 16, 1999

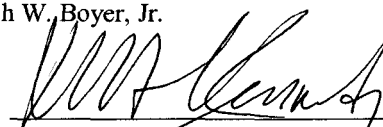
The Board of County Commissioners met in regular session; all three members were present.

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Linda Brunson as principal for Warrant #38491, issued 6/10/99 on the Missoula County Payroll Fund in the amount of \$46.17, not received in the mail.

Plat and Improvements Agreement -- The Commissioners signed the plat and improvements agreement for The Meadows -- Phase I, a residential/recreational development at the Double Arrow Ranch at Seeley Lake, MT, located in Section 11 and 14, T16N R15W, PMM, Missoula County, a total area of 23.64 acres, with the owner/developer being Double Arrow Enterprises, Inc.

Plat and Improvements Agreement -- The Commissioners signed the plat and improvements agreement for Henry's Estates, a subdivision of Missoula County, located in portions of the S1/2 SW1/4 of Section 29, T15N R21W, PMM, a total area of 6.333 acres, with the owner of record being Joseph W. Boyer, Jr.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, JULY 19, 1999

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

TUESDAY, JULY 20, 1999

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

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Mindy Smith as principal for Warrant #255920, issued 7/16/99 on the Missoula County General Fund in the amount of \$233.40, not received in the mail.

ADMINISTRATIVE MEETING

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

Easement Agreement – The Commissioners signed an Easement Agreement with the Aeronautics Division of the Montana Department of Transportation allowing the State to maintain the beacon tower on the Seeley Lake Airport. Missoula County is granted a minimum of a microwave dish site and four antenna sites on the west side of the tower.

Amendment to Memorandum of Agreement – The Commissioners signed an Amendment to the Memorandum of Agreement with Missoula City Parks and Recreation Department to provide recreational and literacy activities to participants in Drug Court. This amends the value of the Agreement from \$5,000.00 to \$7,500.00. Duration of the Agreement is 12 months, terminating on September 30, 1999.

Extension – The Commissioners approved a 6-month extension of the final plat submittal for Rolling Hills Preliminary Plat Subdivision, making the new filing deadline February 26, 2000, with a letter to Jerry Grebenc of PCI.

Counter Offer – The Commissioners approved and signed a Counter Offer from USF Reddaway for purchase of Lots 2 and 3 and a portion of Lots 10 and 11 of Block 4, Missoula Development Park, for \$525,000.00. The Counter Offer was returned to Don Sokoloski at Properties 2000 for further handling.

Other items included:

- 1) The Commissioners discussed and approved a proposal for engineering services to make short-term improvements to the El Mar and Golden West sewer systems. Cost is \$10,813.00 for El Mar, and \$2,539.00 for Golden West.

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

WEDNESDAY, JULY 21, 1999

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

Audit List – The Commissioners signed the Audit List, dated July 21, 1999, batch numbers 24, 27, 28, 32, 33, and 34, with a grand total of \$174,339.70. The Audit List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

The Commissioners discussed authorization for counsel from the County Attorney's office to propose that Missoula County act as lead agency to explore relocation of Grant Creek as a solution to drainage issues in the Mullan Trail Subdivision area.

PUBLIC MEETING – July 21, 1999

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

Public Comment

None

Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$155,833.38. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Hearing: Lutz Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 17 of COS 219, known as Jordan Ranch Tracts.

Linda Lutz has submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 15 acres in size located in the Potomac area off Coloma Way, a private road. Linda Lutz proposes to create an approximately 2 acre parcel on the north portion of the property for transfer to her son, Shane J. Lutz. Two homes already exist on the original parcel.

The history of the parcel is as follows: Certificate of Survey 219 was filed in 1974 creating 43 parcels (prior to the effective date of the Subdivision and Platting Act). Tract 17 was transferred to Linda Lutz in 1989.

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

Linda Lutz was present and came forward to answer any questions the Commissioners may have.

Chair Kennedy stated that the Family Transfer exemption from the Subdivision and Platting Act allows for subdivision of land without review. Because of that, the Board may ask questions to allow them to make a judgment as to whether or not this is an attempt to evade subdivision regulations. These questions may be personal in nature.

Commissioner Evans asked Ms. Lutz if she intended to transfer this to her son?

Linda Lutz stated she did. Her son is applying for a mortgage as he needs a bigger house. In order for the mortgage to go through, he needs a piece of land. He has lived on the property for eight years and has five children.

Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by Linda Lutz to create a new parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Chair Kennedy stated Ms. Lutz would receive a letter from the Board explaining today's action. This does not mean there is permission to build a house, there are other processes that need to be completed prior to construction.

Hearing: McGuire Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 17 of COS 103 located in Section 1, Township 16 North, Range 15 West.

Brice and Mary McGuire have submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 12 acres in size located near Seeley Lake off South Canyon Road. The McGuires propose to divide the parcel in half, transferring the north portion of the property to their son, William C. Tils.

The history of the parcel is as follows: Certificate of Survey 103 was filed in 1973 creating 21 parcels (prior to adoption of the Subdivision and Platting Act). Tract 17 was transferred to Brice T. and Mary McGuire in 1992.

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

Mary McGuire was present and came forward to answer any questions the Commissioners may have.

Chair Kennedy stated that the Family Transfer exemption from the Subdivision and Platting Act allows for subdivision of land without review. Because of that, the Board may ask questions to allow them to make a judgment as to whether or not this is an attempt to evade subdivision regulations. These questions may be personal in nature.

Commissioner Carey asked Mrs. McGuire if she intended to transfer the parcel to her son?

Mary McGuire stated she did intend to do that. She has his boat, he can have the land.

Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by Brice T. and Mary McGuire to create a new parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing: Subdivision Regulation Revision of Article 4 (Clarifying review period of subdivision plats from calendar days to working days in compliance with HB 300)

Chair Kennedy summarized the change requested.

This is a request to amend Article 4 of the County Subdivision Regulations to change the review period for preliminary plats and minor subdivisions from "calendar days" to "working days," for the 60 day and 35 day review periods, as well as the 21 day period prior to Planning Board and the 14 day period prior to governing body hearing for summary plats, in compliance with recently adopted State law.

Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners amend Article 4 of the Subdivision Regulations changing the review period for preliminary plats and minor subdivisions from "calendar days" to "working days" for the 60 day and 35 day review periods, as well as the 21 day period prior to Planning Board and the 14 day period prior to governing body hearing for summary plats, to comply with recently adopted State law. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Hearing: Lolo Greens (9 lot subdivision) – Lakeside Drive in Lolo

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

The applicants, Duane Pettersen and Bob Kelly, represented by PCI, are proposing to create a 9 lot subdivision from 3 acres of a parcel that is 42.6 acres in size, leaving a 39.6 acre remainder. The property is located on the west side of Lakeside Drive in Lolo. Pete's Pitch and Putt, a nine hole golf course, is located on the remainder to the west of the

proposed subdivision. The proposed plat indicates some area north of Lot 5 and south of Lot 6 where four additional lots could be created through future development. There is residential development located to the south and east of the property in the Lakewood Estates subdivision.

The property is zoned ZD41A, a citizen initiated zoning district that specifies single family residential uses, grazing, horticulture, agriculture and timber growing activities. The minimum lot size is 10,000 square feet. The 1978 Lolo Land Use Plan recommends urban residential land use with a density of up to 6 dwelling units per acre for most of the property and parks and open space is recommended for the southern portion of the proposed subdivision, located in the floodplain, which is also proposed as a park area.

The subdivision will be accessed primarily from Lakeside Drive, a paved County-maintained road with a 32 foot surface width and no curbs, gutters or sidewalks. Proposed access to Lots 1 through 4 and 7 through 9 is from Lakeside Drive. Horace Brown, the County Surveyor, stated that Lakeside Drive has enough traffic that access should be limited through shared driveways. The Surveyors Office needs to approve approach permits.

There is an unpaved driveway between proposed Lots 5 and 6 that serves Pete's Pitch and Putt. The applicants have proposed to dedicate a 60 foot public access easement named Golf Drive and pave this road to a 20 foot width to the western subdivision boundary. The applicant has requested a variance from the requirement from road width to a 20 foot width for Golf Drive and staff is recommending approval of that variance request, as did Planning Board.

Golf Drive will be privately maintained to the western boundary of the subdivision by lot owners who access from Golf Drive. The turnaround will either be a hammerhead at one of the driveways from the lots accessing or Pete's Pitch and Putt would have a turnaround on it. Conditions 1 through 3 address road issues related to RSID waiver for future improvements, maintenance of Golf Drive and turnarounds on Golf Drive. Condition 10 would require a waiver of the right to protest a maintenance district for roads serving the property.

The applicants propose to install walkways along the west side of Lakeside Drive and the north side of Golf Drive. The applicants have stated that in terms of drainage, additional surface runoff from roofs and driveways would be retained on site. The application includes calculations for a 10 year runoff event. There are no curbs or gutters proposed for either Lakeside Drive or Golf Drive. The runoff will be collected in swales and flow north and west to lower elevations on the property. There is a variance request from curb and gutter requirements. Both staff and Planning Board recommend approval of the variance request.

Water and sewer would be provided to the subdivision by RSID 901 (Lolo Water and Sewer) in Lolo. Base flood elevations delineated in 1995 during the review of Pete's Pitch and Putt are shown as an attachment to the plat. There are no proposed residential lots within the 100 year floodplain as it was mapped in 1988. The soils do have seasonal water tables between 20 and 40 inches below ground surface. Conditions 4 through 6 address issues related to high ground water and proximity to the floodplain. Condition 6 requires that the final plat show floodplain boundaries adjacent to the residential lots as is shown on the preliminary plat. Condition 5 requires covenants notifying the lot owners about high ground water and the proximity to the floodplain. Even though the properties are outside the floodplain, Condition 4 originally recommended that the first floor elevation of the houses be elevated on slabs two feet above flood elevation, which is also higher than the seasonal water table. That condition, through discussion with the Planning Board, Commissioners and applicant, has a suggested amendment that would mitigate the potential for high ground water in crawl spaces for structures.

The Surveyor's Office stated that the developers should make sure that the existing drainage system for the property is not disturbed during site grading. Grading and drainage plans would be reviewed before issuance of the building permit as well as before final plat filing. There are several riparian areas on the property but very little on the actual portion that is to be developed. There is a depression running north and south to the west of Lots 5 and 6 and there is also a pond located in the southern portion of the subdivision, which is connected to Hayden Lake to the east via a culvert under Lakeside Drive. There is a slough that continues along the southern portion of the remainder. The applicants have proposed to dedicate the pond and surrounding riparian area as park.

The proposed plat includes a 5 foot no build zone on the western boundary of Lots 5 and 6 which would give about 15 feet of buffer from the riparian canopy. The proposed Riparian Resource Management Plan states that no landscaping or ground disturbance would occur within that no-build zone. Staff has recommended the plan be revised to increase the no build zone to 15 feet on Lots 5 and 6 and add a 10 foot no build zone to the southern portion of Lot 9. Staff is also recommending that the riparian resource on the remainder of the property be protected and enhanced as well, however, that is not something that can be addressed through this subdivision process.

The Weed District recommended that covenants address noxious weed control on undeveloped lots, noted as Condition 8. Planning Board recommended one addition to the condition, that the word "noxious" be added.

The applicant presented the proposal to the Lolo Community Council in February of 1999. The residents raised three major issues: the potential for flooding; whether the culvert under Lakeside Drive would be modified; and whether the subdivision would affect wildlife or wetlands. The applicant stated the culvert and the slough will not be altered during construction of the subdivision.

OPG received a written comment from an adjacent property owner concerned about sewer and water capacity in Lolo and whether fees paid by developers would cover the cost of new sewer and water hookups, increased traffic on Glacier Drive and dust control on Golf Drive.

The Planning Board hearing was held on Tuesday, July 6, 1999, and they recommended unanimous approval of both variance requests and the subdivision, subject to 9 conditions. They recommended one change in the wording of Condition 8. There are two additional changes to conditions, one is the additional Condition 10, which addresses a road maintenance RSID and the second is amended Condition 4 regarding crawlspace construction.

Commissioner Carey asked how the written concerns by the adjacent property were addressed?

Nancy Heil stated the sewer and water rights that will be allowed for this subdivision are ones already in existence through RSID 901. There is not a creation of new rights, they are being transferred from the Holt property. There is a letter in the application packet from the Chief Administrative Officer that indicates approval of the water connections.

Commissioner Carey asked if the paving would take care of the dust concerns?

Nancy Heil stated the portion of Golf Drive from Lakeside Drive to the western boundary of the property will be paved. She was not sure if there were plans to pave the rest of the way to Pete's Pitch and Putt.

John Kellogg stated that would probably happen at some point.

Nancy Heil stated there would be some increase in traffic generated by 9 additional residential lots.

John Kellogg, Professional Consultants Incorporated, developer's representative, was present. He thanked Nancy Heil for the thorough review of the subdivision. Mr. Pettersen and Mr. Kelly have worked to present a carefully designed development around the proposed park and riparian areas. The intention is to develop a subdivision which is in keeping with the character of this portion of Lolo. They will be paving the first walkway in the area and providing a paved road to the west of the property. They feel it is an appropriate and good addition to this part of Lolo. It is in conformance with the Comprehensive Plan and zoning and has unanimous approval from the Planning Board. He has discussed the proposed changes to the conditions. The builder, Perry Ashby, is in agreement with the changes.

Chair Kennedy asked since this is the same subdivision, could pavement be required all the way to Pete's Pitch and Putt as part of this approval?

Colleen Dowdall stated the road is on the remainder parcel which is not subject to review and not a part of this subdivision. Her understanding is the developer intends to do it, but it can't be a condition of approval.

Chair Kennedy asked Mr. Kellogg is there was a schedule for this paving?

John Kellogg stated there was no schedule yet. They were slightly reticent to commit to paving until more investigation can be done with regard to costs. Until the bottom line is known, they would prefer not to commit to paving. No new lots will be accessed by that additional roadway. They prefer to keep to the confines of the proposed subdivision.

Chair Kennedy stated the dust problem was there before this was developed. The dust generated may now affect some of the lots on this proposal. He strongly encouraged the developer to do something about paving the remainder of Golf Drive.

John Kellogg stated it was likely that would happen.

Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans asked if the discussions regarding crawl spaces and road maintenance were included in the updated report?

Nancy Heil stated they were included in the memo she distributed with the amendment to Condition 4 and the additional Condition 10, along with the revised findings of fact and conclusions of law.

Chair Kennedy stated another piece of correspondence was received from Clarence Rule. He read the letter into the record: *"Dear Commissioners: I am concerned about a possible subdivision. Gene Pettersen who lives and adjoins my property apparently is planning, and a post is now set to divide. I am very concerned about my well and septic system. Please keep me advised. - Clarence Rule"* He stated that both water and sewer would be provided by RSID 901, so there would not be any impact to a water well. He was confident those issues were addressed in this subdivision.

Commissioner Evans stated that Clarence Rule does not live near this subdivision and did not feel his concerns were well founded.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(4) of the Missoula County Subdivision Regulations which requires curbs and gutters on Lakeside Drive and Golf Drive; and approve the variance request from Article 3-2(3) for Golf Drive to vary from the 32 foot surface width to a 20 foot surface width, both based on the findings of fact set forth in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the Lolo Greens Subdivision, based on the findings of fact in the staff report and subject to the conditions as amended and additional Condition 10. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Lolo Greens Subdivision Conditions of Approval:

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

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for improvements to Lakeside Drive and Golf Drive, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land." *Subdivision Regulations Article 3-2 and County Surveyor recommendation.*

2. The road maintenance agreement for Golf Drive shall be reviewed and approved by the County Attorney's Office prior to plat filing. *Subdivision Regulations Article 3-2.*

3. Road engineering plans and specifications for improvements to Lakeside Drive and Golf Drive shall be approved by the County Surveyor's Office prior to plat filing. Turnarounds for Golf Drive shall be approved by the Missoula Rural Fire District prior to plat filing. *Subdivision Regulations Article 3-2(1)(J), 3-2(8) and County Surveyor recommendation.*
4. Grading, drainage, and erosion control plans for the site shall be reviewed and approved by the County Surveyor prior to plat filing. The plat shall include a statement by the consulting engineer certifying that the drainage design will effectively retain any additional drainage that results from the subdivision on site or release it in a manner which will not substantially increase the peak run-off normally present before the subdivision. The developer shall provide engineering plans that will alleviate the hazard of high groundwater to be approved by the County Surveyor's Office and building division prior to plat filing and building permit issuance. Concrete footings for structures shall be located at or above base flood elevations. The crawlspace cannot be excavated below one foot above that elevation. Site grading and drainage plans shall be reviewed and approved by the County Surveyor's Office prior to issuance of a building permit. *Subdivision Regulations Article 3-4, 4-1(12) and County Surveyor recommendation.*
5. The covenants shall be amended to include a statement that the property is located in an area known to have high groundwater and near the 100 year floodplain and that special construction may be required. Covenants related to high groundwater, basements, wildlife, fire standards, or riparian areas shall not be amended or deleted without governing body approval. *Subdivision Regulations Article 3-1(2), 4-1(12).*
6. The final plat shall show floodplain boundaries located on the remainder and the park, as depicted on the preliminary plat. *Subdivision Regulations Articles 3-1(2), 4-1(12) and Floodplain Administrator recommendation.*
7. The riparian management plan shall be amended to increase the no-build zone to 15 feet on Lots 5 and 6 and to encourage the establishment of riparian vegetation on the western portions of Lots 5 and 6. A 10 foot no-build zone shall also be added to the southern portion of Lot 9. An attachment to the plan should clearly delineate the boundaries of the riparian area. The riparian management plan shall be included in the covenants and shall be approved by OPG prior to plat filing. The final plat shall show the no-build zones and indicate that no building, ground disturbance or non-native landscaping is permitted in these areas. *Subdivision Regulations Article 3-13, 4-1(12).*
8. The covenants shall be amended prior to plat filing to state that noxious weeds shall be controlled on unsold lots. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*
9. The covenants shall be amended to include "Living with Wildlife" recommendations, subject to OPG approval prior to plat filing. *Subdivision Regulations Article 4-1(12).*
10. The following statement shall appear on the face of the plat:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for inclusion in a maintenance district for roads, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land." *Subdivision Regulations Article 3-2 and County Surveyor recommendation.*

Hearing: Pleasant View Homes (44 lot subdivision) – Flynn Lane off Mullan Road

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

John Diddel, represented by Ron Ewart of Eli & Associates, has proposed a 44 lot subdivision 10.83 acres east of Flynn Lane and 3/4 mile north of Mullan Road. The property is north of Hellgate Elementary School and was part of the original Dougherty Ranch. The property is zoned C-RR3 (Residential), which allows a maximum residential density of 4 dwelling units per acre. The applicant has proposed a Planned Variation to supplement the existing C-RR3 zoning, which would allow reduced lot size and building setbacks. The Planned Variation also details standards of the landscaping plan for the site and establishes requirements for building orientation.

This proposal is a revised request. The project has been moved north of the originally proposed location due to site constraints related to floodplain and the 65 decibel noise contour of the airport. The site design has remained essentially the same with some reconfiguration of the road system. Additional comments were requested from agencies that could be affected by the change in the location from the original proposal.

The site is located along Flynn Lane in an area that is currently rural in character. This development will be the first urban residential subdivision in the area. The applicants included a development plan that shows other future subdivisions to the east and south of this proposal. There is a phasing plan for this subdivision.

The 1998 Missoula Urban Comprehensive Plan recommends urban residential land use with a density of 6 dwelling units per acre. The property is also within the Wye-Mullan Planning Area, where there is a neighborhood planning effort underway. The property is currently used as grazing land and there is an irrigation ditch that runs east/west across the property which is part of an old flood irrigation system which dead-ends just on the west side of Flynn Lane. The applicants propose to fill this ditch in. Conditions 16 and 17 address agricultural issues.

Both City and County staff and the applicants have had extensive discussions about how the proposal could fit in with future transportation plans for the area. The residents have expressed concern that Flynn Lane not become the major north/south connector between Broadway and Mullan Road. The Dougherty Ranch is granting an 80 foot wide public access and utility easement running north/south from West Broadway that would be east of this subdivision. That could serve as a future north/south connector between West Broadway and Mullan Road.

Flynn Lane is currently paved to a 24 foot width within a 30 foot right of way and the applicant proposes to extend that right of way to 76 feet to allow for maximum setback of homes from Flynn Lane. None of the lots would access directly off Flynn Lane. The lots fronting Flynn Lane would be served by a rear alley. There would be three parking pods along Flynn Lane to address parking concerns.

"D" Street will be located within an 80 foot public access easement which could eventually connect to Reserve Street, possibly at Northern Pacific. For that reason the County Surveyor has recommended that street be named Northern Pacific. The proposed plat also shows some additional connector streets that are named currently "A," "B" and "C." There are some alleys as well.

There is one variance request for a right of way width to 54 feet for "A," "B" and "C" Streets and both staff and Planning Board have recommended approval of that variance request.

The applicant has proposed to install walkways along Flynn Lane and the new streets serving the subdivision as well as a walkway along an alley and pedestrian easement that would connect "B" Street to Flynn Lane. The school district and others have expressed some concern about pedestrians crossing Flynn Lane to reach Hellgate Elementary and Middle School. Condition 6 requires that a crosswalk be installed at a location to be approved by the Surveyor. It also requires that the developer install a temporary pedestrian walkway between the subdivision and the school in a location and design to be approved by the Surveyor's Office.

There is a portion of the property south of this proposal that is currently adjacent to a designated 100-Year Zone A Floodplain. The applicant and others believe the mapping of this floodplain is in error, however, there are still concerns in this area about the potential for surface water problems since the Grant Creek Channel historically braided throughout the property. There are two main concerns. One is if proper headgates or control structures are not in place above Highway 10, that Grant Creek could reclaim its old channel during a large event and cause water to reach the subdivision. Second, that subsurface flows could still travel beneath the old creek channel even though the surface has been filled. Conditions 11(a) through 11(d) address floodplain concerns. Condition 11(a) addresses the adequacy of existing control structures; 11(b) requires a study assessing the likelihood that subsurface flow could cause flooding on the site in a 100-year event; 11(c) requires covenants notifying owners that the property is within the former drainage system. Condition 11(d) requires indemnification of Missoula and errors and omissions coverage for the engineer. The wording of this condition was discussed with the applicant and some revised language was recommended by Planning Board.

The proposed drainage plan retains runoff on site via swales and a storm water retention area in the park. The Surveyor's Office recommended that sumps not be used in this area. Conditions 8(a) through 8(d) address requirements for grading and drainage on the site, including calculations for a 100-year event, percolation rates and ground water elevations. Condition 8(c) requires a waiver of the right to protest an RSID/SID for storm drains. This was recommended by the City Engineer because surface percolation methods traditionally used in the past may not be adequate for the level of development proposed for the area. The feeling has been that development in the Mullan/Flynn area may need to participate in a major storm drain project to accommodate current and future development proposals. The Surveyor's Office hopes to conduct a runoff master plan study for the area which would identify elevations for a north/south storm runoff collector. The retention basin proposed could eventually connect to such a system.

There has been a considerable amount of discussion with the applicant about the RSID condition. There has been some concern that it was too open ended. The applicant proposed a cap of \$1,500 plus 3% of that amount annually. Planning Board's recommendation was for a cap not to exceed \$2,500 adjusted by the ENR index as necessary. The Commissioners have had discussions that the condition not have a cap but have the wording included that the waiver be for a "regional" RSID/SID.

The property is located within the Airport Influence Area. The proposed subdivision is not within the 65 decibel noise contour. Some of the property south of this proposal is within the contour, where residential use is generally not encouraged. Conditions 13 and 14 address avigation easements.

Mountain Water will provide service to the subdivision via a water main extended south from West Broadway. The subdivision will connect to a City sewer line that crosses the Dougherty Ranch to serve Hellgate Elementary School. The City Contract Sewer Committee approved a contract for sanitary sewer with the condition that the development meet urban subdivision standards.

The applicant has proposed to designate a recreational park to be held in common and maintained by the homeowners. The park is slightly less than the required area so Condition 18 requires cash in lieu to make up for that amount. The original project was discussed at a Neighborhood Planning Citizen Advisory Meeting for the Wye-Mullan Planning Area and there were some concerns raised about children safely crossing Flynn Lane to reach Hellgate and also a desire to see Flynn Lane retain its rural character.

OPG received one written comment on the proposal. A nearby landowner stated that surface water had flooded across Flynn Lane during periods when the ground had frozen and then there was a fast snow melt. They had questions about what would happen to the drainage system if the ground became saturated and where runoff would go and if neighborhood wells could be affected by this.

The proposed Planned Variation would allow some increased density, decreased minimum lot size and reduced setbacks. Staff recommended changes to the proposed Planned Variation standards, mostly in terms of wording and some slight alterations in the lot size and minimum lot width.

The Planning Board held a hearing on this request on July 6, 1999, and voted unanimously to recommend approval of the Planned Variation; the variance request for right of way width; and approval of the subdivision subject to 19

conditions as amended. They recommended a change in Condition 11(d) which relates to the indemnification and a change to the RSID wording in Condition 8(c).

Ron Ewart, Eli & Associates, developer's representative, was present. He wanted to take a few minutes to talk about the proposal in more detail. During the past several months, they have been in close contact with OPG and several other City and County offices. They appreciated all the time and effort those offices had provided on this project. Together, a good design has been developed. There were a lot of details worked out in various meetings. The proposal has been redesigned and redrawn several times. One of the things done was to move the project to the north to get out of the 100-year floodplain area, which they feel is in error, and also to get out of the 65 decibel level noise contour. This property is not located within that level and there was some discussion as to whether or not homes could actually be allowed within that level. There is a Commissioners Resolution adopted in 1978 that allows single family residential construction in the level and offers some soundproofing measures. It was felt those measures could be met because of the quality of construction proposed for this property. By moving from that problematic area, the issues raised can be worked on later. If this proposal proceeds well, phasing may not be necessary. Mr. Diddel would like to then proceed with another 30 acres of subdivisions in that particular area. Over time this entire area might become grid style developments with some variations and commercial uses. This grid design is preferred to start as it is the most efficient in terms of transportation and infrastructure. The Planned Variation is requested and in exchange the developer is providing many planning details that are not normally done in subdivisions, especially landscaping, strict covenants and various other things. Homes on Flynn Lane will face Flynn Lane, which is important. Throughout the entire area, homes should face the street on which they are addressed. There will be boulevard planting areas along all the streets. The lot sizes will be from 5,400 to 5,660 square feet, with an 80 foot lot depth and a 68 to 70 foot lot width. That is slightly smaller than other lots around town for a single family home but works well in combination with the park and school play area. Through the covenants, homeowners must plant trees and maintain landscaping, but the smaller lot size will decrease the time involved to accomplish this. The setbacks are reasonable as well. A 20 foot easement for water connection has been filed north to West Broadway, which will become an 80 foot easement at the time when it is needed. There are also easements in places that could connect with other road easements to connect with North Broadway or Mullan Road. Over time, this project could be the catalyst to start reviewing the situation to see where connections might be possible. Other property owners in the area would have to be involved in the process and they feel they are doing the best they can right now to prepare for future transportation networks. The land is fairly flat and there is a ditch that dead ends at Flynn Lane. On several occasions when he has been on the property he has seen no water in the ditch, or any water on the property, it goes through active ditches to the north. They are proposing grassy swales along the alleys and curb and gutter with distribution to the central park, which will be graduated down to 2 or 3 feet lower in depth than the surrounding area. Along the east part of the property, Lots 33 through 44, there is a 30 foot wide greenway before the next lots in a future subdivision would even start. That would also help to hold retention water as well.

Chair Kennedy asked where this depression would be?

Ron Ewart stated the park would be 2 to 3 feet lower than the surrounding area and between this subdivision and the next future one, there would be a 30 foot wide greenway before the next lots in the future subdivision would even start.

Chair Kennedy stated they would have to excavate the swale as well as the park.

Ron Ewart stated that was correct. There would be culverts under some of the streets to convey water to the park.

Commissioner Evans stated she did not want the park to become a mucky mess like the excavated drainage at the new Albertsons.

Ron Ewart stated there is a big difference here, because there may never be any water collection, or a small amount, unless there was a huge storm.

Commissioner Evans asked if it was strictly infiltration or were there sumps?

Ron Ewart stated it would be retention only, Horace Brown had said he did not want sumps used. From soil analysis conducted, they felt the soils were very permeable.

Commissioner Evans stated her main concern is that if this is a park, it not be a mucky mess the majority of the year so the children could not play there.

Ron Ewart stated he did not foresee any water sitting in the park except for maybe after a big storm. Water does not sit out there now. Some water might have flowed over the top of it when the ground thawed, but that was the only time it had been observed. The park will be green and children will be able to play there. There is not a ground water problem identified here. Several 10 foot deep holes have been dug and tested throughout the high ground water season and all remained dry. There are strict covenants and homeowner requirements regarding landscaping.

Chair Kennedy asked if the drainage for all impervious surfaces, sidewalks and streets, was expected to be conveyed to that location?

Ron Ewart stated the drainage would go to any grassy area, including the park; any overland drainage that doesn't percolate into a person's yard. Through elevation it has been worked out that valley gutters and so on will get the drainage to the park. Any water that doesn't percolate will be retained in swales or the park. There have been some good preliminary drainage plans done to date, and they will be refined as the project progresses. Overall progress will continue with the transportation plan and the 65 decibel noise level restrictions. This project is the first one for this area and it is hoped others will be built with quality standards. This one is being built on flat ground with urban standards.

Chair Kennedy stated he was still curious as to how runoff water would be conveyed. He did not see how water from the impervious areas could flow from Flynn Lane to the park and swale area. Injection wells are not an option.

Ron Ewart stated that along Flynn Lane there is a swale now which will be improved. There will be a culvert under the parking pods. Water from the house will flow at a 2% grade toward the swale on Flynn Lane. From the back of those lots water would go to the swales in the alley. On the next street over, water would flow to the curbs. The park elevation will be lower so the water can flow into it through valley gutters or some other method.

Chair Kennedy stated no water from the bottom side of the development would flow to the park, it would be taken care of through swales on Flynn Lane.

Ron Ewart stated it would be through Flynn Lane and the alley.

Chair Kennedy asked if the alley would be new construction, a new swale? Would it be surfaced in any way?

Ron Ewart stated the alley will have a 16 foot wide paved surface with grassy swales on each side. Besides the grassy swale, there is also a 5 foot drainage and utility maintenance easement.

Chair Kennedy stated he did not find a computation on the drainage that allows for the sizing of the swale/park. Has that been done or was a decision made to use 4 lots?

Ron Ewart stated those computation have been done.

Chair Kennedy stated the developer is representing the size of the park, roughly 4 lots, is sufficient to carry all of drainage for all of those houses on the east side.

Ron Ewart stated their preliminary drainage analysis showed this should work. More details have to be worked out after preliminary approval and the plans will need to be reviewed by the City Engineer and the County Surveyor.

Chair Kennedy wanted to re-emphasize the point Commissioner Evans made. This is not just a swale, it is a park. It is their expectation it will be a usable park. He asked who owns the drainage ditch?

Ron Ewart stated the ditch is not connected with any of the Missoula Irrigation ditches. It is strictly Mr. Dougherty's ditch which is a remnant from the old flood irrigation system.

Chair Kennedy asked about the sewer connections, would part of them be the Dougherty sewer connections?

Ron Ewart stated there is a 6 inch forced main from North Reserve following the south line of Section 7 that goes to Hellgate School. That came with 200 sewer rights and this subdivision will use 44 sewer rights.

Chair Kennedy stated this was in the County but would likely be annexed in the City. The County does not have authority for clean sidewalks and boulevard maintenance. How will maintenance of the grass and tree watering be handled?

Ron Ewart stated that would be done through the homeowners, as stated in the covenants.

Chair Kennedy stated the RSID/SID waiver for storm drainage had been amended to read "regional." Did Steve King have a problem with that wording?

Steve King, Missoula City Engineer's Office, stated Nancy Heil had reviewed the amended language for the RSID/SID waiver with City Public Works and they were agreeable with the insertion of the word "regional," to make it clear that this one subdivision is not intended to take the entire burden of a storm water SID.

Chair Kennedy opened the public hearing.

Wally Congdon stated he was present on behalf of Mr. Diddel and indirectly on behalf of the Doughertys. He addressed the amendment to Condition 8(c) regarding the addition of the word "regional." The bank stated they are agreeable with this change in definition and Mr. Symmes wrote a letter to that effect. With regard to the park and excess drainage, it was his understanding that the only time flow of water is a problem on site is when the ground is frozen, there is a snowpack on it and then a warm rain falls leaving nowhere for the water to go. It is contemplated that the park area will only have water in it as active storage during those sheet flow events in early spring. That is not anticipated as a high use period for the park. In addition, the playground for Hellgate Elementary is about 1/4 mile away and a subdivision condition is that some kind of crosswalk be maintained to that playground. In the event of a spring event that results in water storage, the playground would still be accessible. There should not be a sheet flow problem the rest of the year. The irrigation ditch carried Grant Creek water originally when the Dougherty Ranch flood irrigated. Water was brought in under Old Highway 10 to a headgate diversion structure. Dougherty Ranch has the water rights on the ditch and own all the ground the ditch services. They consent to this proposal and own all the land that is being sold to Mr. Diddel. Flood irrigation has not happened for a number of years. Another condition of approval is to check out the headgate structures on Highway 10 to make sure they function properly and are adequate to handle flow. Lastly, it is the intention of the developer that the park will be a park, grassed and taken care of by the Homeowners Association. The next phase of this area's development will be adjacent to this park and there will be swale areas to handle on site drainage should it be necessary. The Flynn Lane drainage would continue to use its current method, it would not be diverted to the park storage site.

Commissioner Evans asked Mr. Diddel if he understood her concern about the park? Had he seen the Albertsons area she referred to?

John Diddel stated he knew of the Albertsons site but felt there could be no direct analogy between the two sites. He has been in discussion with the Mount Jumbo League about acquiring some land to the south of this subdivision for a permanent ball park.

Commissioner Evans wanted Mr. Diddel to understand and assure her that if this park is not usable, something else will be done.

John Diddel stated he would assure her of that fact.

Commissioner Carey asked if any different configurations had been looked at, both financially (the cost of housing) and in the design. The area looks very boxed out.

John Diddel stated he has spent many hours looking at design and cost. His recent Bridge Court development off Reserve on Spurgin Road was 13.25 homes per acre. Those homes were sold out quickly. He felt this development would afford the type of housing for young families they didn't get in the higher density development. There is a lot of land in the area which could generate a different mix but this project is hoped to service the young family market. He will be instrumental in the design of the homes and have one builder, which will allow for good control over the look of the area.

Commissioner Carey stated this project will likely set an example for future development. If there was a way to do some creative design and still keep it affordable, it would help in future planning. Had Mr. Diddel looked at mixing income levels?

John Diddel stated that was a possibility in the future. Right now there were a lot of homes on the market between \$135,000 and \$185,000. This lower income market is not being serviced currently and depending on how these homes sell, more mix and uses could be included in future developments.

Commissioner Evans stated that this design fits the grid pattern adopted by the County. While it may not be as pretty as winding roads and cul-de-sacs, it does fit the pattern adopted.

John Diddel stated he agreed, aesthetically, winding streets would be preferred, but the wave of the future is toward this grid pattern. His concentration would be more toward varied architecture.

Chair Kennedy stated that if more developments are planned, perhaps curvilinear design could be incorporated without affecting the bottom line. Curvilinear could perhaps make it more attractive to future buyers. Could that curvilinear concept be provided for this development knowing more are planned?

John Diddel stated he was more than willing to do that, but the information provided by OPG advocated this grid style of development. It would probably not affect the bottom line after they are established in the area, it could create more flexibility.

Colleen Dowdall stated she supports Mr. Diddel's assertion that this type of development has been supported by Growth Management. A plat map of the University area would look as boxy and unattractive as this, but the effort with boulevard sidewalks and alleys is to create this type of development out there. Growth Management Task Force supported striking curvilinear from the proposed regulations, it was not something they wanted to consider or encourage. The developer has attempted to accomplish what Growth Management encouraged.

Chair Kennedy stated the Board has worked to address problems at crosswalks near schools in rural area, with high speed traffic and narrow streets. A possible solution is to incorporate a traffic calming approach by raising the pavement by about 4 to 6 inches where the crosswalk is located. As a car approaches, the children will appear to be taller. A narrowing of the traveled way would also create a slow down in traffic. He suggested the same thing be done in this area. He asked Steve King his thoughts on this possible solution to create a safer environment for the children?

Steve King stated the idea sounded interesting, a modification of a speed table. He may have concerns about 10 foot lane width, but without actually seeing the design, he could not comment objectively. The concept sounds very sound, to highlight and accentuate a pedestrian crossing.

Chair Kennedy asked Mr. Diddel if that were a condition, would that create a problem for him?

John Diddel stated he was familiar with the Target Range situation. The crosswalk guard does an admirable job of taking care of their situation. In his subdivision, it would not be subject to as much through traffic, so it would be a little different situation. He would think about the idea however.

Chair Kennedy stated the County is restricted on the revenue it can raise with respect to operation and maintenance of the roadway system. To alleviate this, the legislature has allowed a maintenance RSID on county roads. On the previous subdivision today, that was a condition. He is suggesting this be a condition for this subdivision as well. Did Mr. Diddel have a problem with that as a condition?

John Diddel asked if that was strictly for asphalt and street maintenance? He would not have any difficulty with that, because by the time any maintenance would be needed, this would probably be in the City.

Commissioner Evans stated the wording would be for an RSID/SID, so that at some point if the City chose to annex, the waiver would still follow.

Colleen Dowdall stated the waiver would follow and it would be a maintenance SID.

John Diddel stated he would rather not have an ongoing SID after the land is annexed into the City, as City taxes are higher.

Commissioner Evans stated she would have no problem with this being a waiver for an RSID only. As the City annexes, the County loses its road maintenance money.

Jim Dougherty thanked the Commissioners and Colleen Dowdall for their assistance to the Dougherty family during this process. His family has a concern about the road on the east side of the property. It will consume 20 acres of ground and will continue northwesterly through other acreage toward the airport. In discussion with Horace Brown, he is adamant that the road be maintained and named as Northern Pacific. The family would like the road named for their great-grandfather, England Boulevard.

Commissioner Evans stated Horace Brown's reasoning was that if it matches with the existing road, it would make it easier to find.

Jim Dougherty stated that Northern Pacific is currently only about 2 blocks long and he is talking about 6,000 linear feet.

John Diddel stated perhaps it could be called England Boulevard until it got closer to being connected with Northern Pacific. At this time, it was not known for sure if it would connect with Northern Pacific, it could be some other street.

Chair Kennedy stated it was a good idea. In Condition 5, he suggested striking the first sentence and begin the condition with "Streets within the subdivision..."

Commissioner Carey agreed.

Commissioner Evans stated it was acceptable to her as long as there was not another street in the County called England so as not to confuse 9-1-1 and the Sheriff's Department.

Jim Dougherty stated to the south of this project was airport influence area. He wanted to put a park in that area.

Colleen Dowdall stated Mr. Dougherty had discussed with her putting in a park across from the school that is within the airport influence area. If all that land is make parkland, can it be banked for future development. That is to give credit to future developments for their park dedication requirement. This has been done in the past.

Chair Kennedy asked if that land was less developable because of the decibel level restriction?

Colleen Dowdall stated the area for the parkland was less developable.

Chair Kennedy asked Steve King if that presented any problem from the City perspective?

Steve King did not see any problem with making the less developable land a regional park as long as drainage issues were addressed and there were "pocket" parks or "tot lots" within future developments.

Nancy Heil stated there had been significant discussions with the developer, staff and the airport on the 65 decibel noise contour, where the line in, what it means, recommendations versus regulations. The airport said they will be conducting, within the next year, another FAR-150 study, which is the information the 65 decibel line is based on. Depending on use projections, the 65 decibel line is not a fixed line, it may change.

Commissioner Evans stated the banking of parkland should include some protection for Mr. Dougherty. There should be a statement in the agreement that the City will honor it or the land would revert back to Mr. Dougherty. She suggested he speak with counsel to protect himself.

Chair Kennedy stated it sounded like a good idea. There are two issues that need to be dealt with, first, he did not want everyone to have to travel to a park and second, the drainage for this subdivision.

Colleen Dowdall stated that what Mr. Dougherty is suggesting would preclude this park. His concern was for a future regional park to be banked against other parkland requirements.

Chair Kennedy stated he misunderstood the suggestion, he thought it was for this subdivision.

Colleen Dowdall stated Mr. Dougherty's suggestion could not be resolved as part of this subdivision, he just wanted the Board to be aware of his future plans.

Jim Dougherty stated he would like to see the 90° corner on Flynn Lane in front of his house eliminated at such time as a major north/south boulevard connects with Mullan Road. It is a dangerous corner.

Nancy Heil stated this had been discussed at some early meetings on this subdivision. A couple of ideas had been suggested.

Commissioner Evans stated this should be discussed at a later date with Nancy Heil, Horace Brown, Mr. Dougherty and others involved.

Steve King reiterated some comments from the City Public Works Department regarding the drainage of this project. The soils further west of town present major concerns for drainage, especially in this particular area. The rainfall intensity calculations might be somewhat low, and those calculations were used to develop the size of the park. This potential problem may be addressed in the conditions with the approval of drainage plans by both County and City. He also had concerns about the overland flow as opposed to an underground storm drainage system. Their recommendation was for a storm drainage system but was a considerable financial burden for the developer. Overland flow can be a nuisance and does lead to increased maintenance on streets. They support the SID waiver for a regional storm drain system. Those were only minor downside issues and he appreciated the developers work with the City. The City supports this project.

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

Commissioner Carey asked about the drainage issue. The Surveyor's Office had commented that "this area has possible complications with the type of soils. Sumps or grass swales are not recommended. Preliminary report and calculation for a five-year storm runoff increase do not equal each other. This subdivision should have a storm drain system with piping to a retention pond without sumps." He asked Mr. Ewart how those comments were addressed?

Ron Ewart stated that Horace Brown did not mean swales, he did not want sumps, but grassy swales were okay. Storm drains might be a better solution but an overall plan had not been looked at because it is unknown what future developments might bring. Storm drains may be installed as time passes and the economics catch up. There is an RSID waiver for storm drains. He also wanted to make it clear that there would be no basements in any of these houses.

Commissioner Evans stated that Condition 9 required inclusion in the Missoula Urban Transportation District (MUTD). She would prefer a waiver of the right to protest inclusion in MUTD when service is available. There are other subdivisions that have been required to be included in MUTD, they are paying into the district and yet they have no chance whatsoever to take a bus because service is not available. To pay for something they have no access to seems unfair.

Chair Kennedy stated that MUTD has a regulated process for annexations and additions for service. Even though the condition is included, it is not automatic the annexation will be granted. MUTD must adhere to this process and there is some protection for the subdivision to not be charged without service.

Commissioner Evans stated it was her understanding that Stone Container pays a fee to MUTD but no service is available.

Colleen Dowdall stated she was uncomfortable with the waiver because she was not certain there is a right to protest inclusion in the district. She also stated the bus does go out Broadway and also goes out Mullan Road to Stone Container. This inclusion in MUTD will not be as outrageous as some other subdivisions. She would also check the language for the petition.

Chair Kennedy stated the petition has to be accepted by the MUTD board.

Nancy Heil stated the letter from MUTD regarding this subdivision said it was adjacent to but outside the boundary of the MUTD Route 10 operating on Mullan Road.

Commissioner Carey asked Mr. Diddel again if there was anything that could be done about the grid-like structure to make it more appealing. He did not want to create a delay but wondered if it might be worth pursuing. He was concerned about setting an example for the area.

John Diddel stated he was not quite as concerned as Commissioner Carey, if the outcome of the University area is looked at. He felt architecture was more important than the street layout. In other developments he has worked on, architecture was the dictating force coupled with control of the development. If multiple builders are allowed, design control is lost. Style cannot be dictated through the covenants. There will be at least 9 different plans with variable roof designs and front projections, contributing to as many as 35 different styles.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(3) of the Missoula County Subdivision Regulations for the right-of-way widths of "A" Street, "B" Street, and "C" Street to vary from 60 feet to 54 feet, based on the findings of fact set forth in the staff report; and approve the Pleasant View Homes Planned Variation, based on the findings of fact in the staff report and subject to staff's conditions and amendments to the Planned Variation. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the Pleasant View Homes Subdivision, based on the findings of fact in the staff report and subject to the conditions as amended. Those amendments include the deletion on Condition 5; the amended language for Condition 8(c) and the amended language for Condition 11(d); and the addition of Condition 20 for the waiver of the right to protest an RSID for road maintenance.

Nancy Heil clarified additional Condition 20 would be essentially the same as the one added to Lolo Greens today, but per the Board's request, it would be for an RSID only, not an RSID/SID.

Commissioner Evans stated that was included in her motion.

Chair Kennedy wanted a clarification. The RSID runs with the land, but did it carry past annexation?

Colleen Dowdall stated that RSIDs and SIDs were authorized by a different set of statutes. If the waiver is only for an RSID it will be limited to an RSID. The usual waiver statement is for an RSID/SID.

Commissioner Evans asked if the City had the right to impose an SID whether the people liked it or not?

Colleen Dowdall stated the City does have the right to impose a street sweeping district in spite of protests. She was not sure about other types of SIDs.

Chair Kennedy stated he thought there were conditions under which the City had authority to pass SIDs that the County did not but did not know if those extended to street maintenance. He did not want the City to annex the subdivision but not have the opportunity to maintain and manage the streets upon annexation.

Commissioner Evans stated she was not opposed to making the waiver for SIDs as well. She amended her motion to include "RSID/SID."

Wally Congdon stated that in order to get the sewer service to the property, the property had to be approved and built to urban subdivision standards. The City's sewer committee rationale for the language was to insure that improvements (streets, sidewalks, gutters, etc) met the City standards. Separate of the County's process, this was required through the sewer contract itself for the sewer rights for these 44 units.

Commissioner Evans asked if that took care of road maintenance?

Wally Congdon stated he believed it did.

Chair Kennedy asked if the Board could stop an RSID at a later date?

Colleen Dowdall stated she believed they could for a road maintenance district.

Chair Kennedy stated to go ahead with the "RSID/SID" and if it gets annexed and it makes sense to abolish the RSID, then action can be taken to do that. If not, it could flow forward.

Wally Congdon stated that was reasonable.

Nancy Heil clarified that amended language on Condition 11(d) was based on discussions with Colleen Dowdall, Wally Congdon and others.

Colleen Dowdall stated the language for Condition 11(d) would be as recommended by the Planning Board.

Nancy Heil stated that Condition 8(d) – "New homes in the subdivision shall not have basements." – originally read that there would not be basements in the homes unless the developer could demonstrate that in a 100-year flood event there would not be problems. Instead of trying to find a mechanism to provide that evidence, the suggestion was made to eliminate basements altogether.

Chair Kennedy stated there were a lot of unknowns in this undeveloped area. As experience is gained, some of these conditions may be modified.

John Diddel stated he did not have a problem with eliminating basements, he was not a fan of them anyway.

Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Pleasant View Homes Conditions of Planned Variation Approval:

1. The landscape plan shall be attached to the Planned Variation standards subject to review and approval by OPG. The plan must be submitted and approved within 30 days of governing body approval. *Staff recommendation.*

Pleasant View Homes Conditions of Subdivision Approval:

1. The Certificate of Survey creating the parcel to be subdivided shall be filed prior to plat filing. Any remainder resulting from the creation of the parcel to be subdivided will be required to undergo subdivision review in order to obtain a legal description. *Subdivision Regulations Article 5-1(4)(B) and County Attorney recommendation.*
2. The Planned Variation shall be approved prior to plat filing. *Subdivision Regulations Article 3-1(1)(B).*
3. Phase I consisting of Lots 12-16, 28-32, and 40-44 shall be filed within one year of approval. Phase II, consisting of Lots 6-11, 22-27, 38-39 and the park shall be filed within 3 years of approval. Phase III, consisting of Lots 1-5, 17-21, and 33-37 shall be filed within 5 years of approval. *Subdivision Regulations Article 4-1(18).*

Roads

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

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for improvements to Flynn Lane, "A", "B", "C", and "D" Streets, and alleys serving the subdivision, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land." *Subdivision Regulations Article 3-2 and County Surveyor recommendation.*

5. Streets within the subdivision shall be approved by the County Surveyor prior to plat filing. Road engineering plans and specifications for improvements, including parking pods, to Flynn Lane, "A", "B", "C", "D" Streets and alleys within the subdivision shall be approved by the County Surveyor's Office prior to plat filing. *Subdivision Regulations Article 3-2(1)(J), 3-2(8) and County Surveyor recommendation.*
6. In addition to required signage and striping required on roads serving the subdivision, the developer shall install a crosswalk prior to plat filing on Flynn Lane serving Hellgate School in a design and location to be approved by the County Surveyor prior to plat filing. The developer shall install a temporary pedestrian walkway between the subdivision and the school in a location and design to be approved by the County Surveyor prior to plat filing. *Subdivision Regulations Article 3-2(2)(F), 4-1(12) and School District and staff recommendation.*
7. A one foot no access strip along Flynn Lane shall be added to the final plat, except along the approaches to "A" Street and "D" Street. *Subdivision Regulations Article 3-2(1)(E) and County Surveyor recommendation.*



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8. a. Grading, drainage and erosion control plans shall be reviewed by the City Engineer and approved by the County Surveyor prior to plat filing. The drainage plans shall include calculations for 5 and 100 year return frequency storms, a geotechnical analysis of soils that includes percolation rates relative to anticipated flows, and groundwater elevations. *Subdivision Regulations Article 3-4, 4-1(12) and City Engineer recommendation.*
- b. The plat shall include a certification by the consulting engineer that the drainage design will effectively retain any additional drainage that results from the subdivision on site or release it in a manner that will not substantially increase the peak runoff normally present before the subdivision. *Subdivision Regulations Article 3-4 and County Attorney recommendation.*
- c. The following statement shall appear on the face of the plat:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future regional RSID/SID for storm drain construction based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land."
- d. New homes in the subdivision shall not have basements. *Subdivision Regulations 3-4, 4-1(12).*
9. The developer shall petition to be included in the Missoula Urban Transportation District prior to plat filing. *Subdivision Regulations Article 3-2(1)(E) and Missoula Urban Transportation District request.*
10. Sewer plans for the subdivision shall be approved by the City Engineer prior to plat filing. *Subdivision Regulations Article 3-7 and City Engineer Recommendation.*

Floodplain

11. a. The applicant shall provide a certification by a licensed engineer establishing that drainage facilities and irrigation ditch control structures are adequate to divert water from a 100 year flood event from Grant Creek, subject to DNRC review and governing body approval, prior to plat filing. *Subdivision Regulations Article 3-1(2), 4-1(12) and Floodplain Administrator and City Engineer recommendation.*
- b. The applicant shall provide a study by a licensed engineer or hydrologist indicating whether or not in a 100 year flood event on Grant Creek, subsurface flow in the old drainage system is likely to cause flooding on the site, subject to DNRC review and governing body approval, prior to final plat filing. In the event that flooding is likely, plans for floodproofing the subdivision shall be provided prior to plat filing, subject to Floodplain Administrator approval. *Subdivision Regulations Article 3-1(2), 4-1(12) and Floodplain Administrator recommendation.*
- c. The covenants shall be amended prior to plat filing, subject to County Attorney's Office approval, to state that the property is within the former drainage system of Grant Creek and that in other areas flooding has occurred outside of the designated floodplain. The County has not reviewed the subdivision to the extent that guarantees can be made about the potential for high groundwater or flooding on the property. *Subdivision Regulations Article 3-1(2), 4-1(12) and County Attorney recommendation.*
- d. Any engineer's certification called for in this approval shall provide evidence of errors and omissions insurance which indemnifies Missoula County for any damages that may result to landowners, homeowners or public infrastructure as the result of a claim against Missoula County for approval of this subdivision based upon the engineer's certification. *Subdivision Regulations 3-1(2) and County Attorney recommendation.*

Fire services

12. Fire hydrants shall be installed or guaranteed prior to filing the plat for each phase of development. The locations shall be approved by the Missoula Rural Fire District. The fire hydrants shall be maintained by the homeowner's association. The covenants shall be amended to reflect this provision prior to plat filing. *Subdivision Regulations Article 3-7(1) and Missoula Rural Fire District Recommendation.*

Airport

13. An avigational easement shall be obtained for the property in compliance with the Airport Influence Area Resolution prior to plat filing. *Subdivision Regulations Article 3-1(2) and Airport Authority request.*
14. The following statement shall appear in the covenants and on the face of the plat:

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

The covenants shall be amended to include information about airport noise subject to Airport Authority approval prior to plat filing. *Subdivision Regulations Article 3-1(2), 4-1(12) and Airport Authority request.*

Weeds/Agriculture

15. A Revegetation Plan for Disturbed Sites shall be approved by the Missoula County Weed Board prior to plat filing. The developer shall file a development agreement stating that unsold lots shall be seeded with a permanent grass cover after roads and utilities are installed. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*
16. The covenants shall be amended to include recommendations for residential uses near agricultural operations, subject to OPG and County Attorney Office approval prior to plat filing. *Subdivision Regulations Article 3-1(1)(C), 4-1(12) and staff recommendation.*

17. The applicant shall provide evidence that filling the irrigation ditch on the property will not impact agricultural water users on adjacent properties. Such evidence shall be approved by the County Attorney's Office prior to plat filing. *Subdivision Regulations Article 4-1(12).*

Parks

18. The applicant shall provide cash-in lieu of park dedication to account for the difference between the areas of the proposed park and the park requirement, in an amount to be approved by the County Attorney's Office prior to plat filing. *Subdivision Regulations Article 3-8.*
19. Improvements to the park, including benches, play structure, and boulevard trees, shall be installed prior to plat filing of Phase III. A development agreement shall state that the developer shall provide all maintenance of the park and common areas until enough development to support the homeowner's association has taken place. The development agreement shall be filed prior to plat filing, subject to County Attorney's Office approval. *Subdivision Regulations Article 3-8 and staff recommendation.*
20. The following statement shall appear on the face of the plat:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for inclusion in a maintenance district for roads, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land." *Subdivision Regulations Article 3-2 and County Surveyor recommendation.*

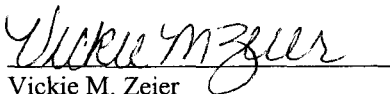
There being no further business to come before the Board, the Commissioners were in recess at 3:30 p.m.

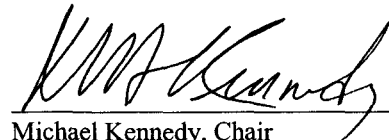
THURSDAY, JULY 22, 1999

The Board of County Commissioners did not meet in regular session; Commissioners Evans and Kennedy attended an all-day Weed Management Field Seminar, and Commissioner Carey was out of the office all day.

FRIDAY, JULY 23, 1999

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


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, JULY 26, 1999

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

The Commissioners reviewed and approved the Auditor's review of the Missoula Public Library. The review was forwarded to the Clerk and Recorder for filing.

TUESDAY, JULY 27, 1999

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. In the forenoon, Commissioner Kennedy participated in the groundbreaking ceremony for the new Share House, located between Montana and Wyoming Streets.

ADMINISTRATIVE MEETING

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

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with Turning Point (Western Montana Mental Health Center) for evaluation of prevention efforts at CS Porter Middle School, and of the Missoula Prevention Coalition (Alliance). Value of the Agreement is \$4,000.00. Duration of the Agreement is July 1, 1999 through September 30, 1999.

Service Agreement – Chair Kennedy signed a Private Line Transport DS1 Service Agreement with US West Communications for three T-1 Services between the Courthouse and the new Detention Center – for network data, telephone services, and video arraignment. Term of the Agreement is 60 months. Charges shall be \$659.88 per month, with a one-time \$2,800.00 charge. The Agreement was forwarded to Patty Anderson at US West in Helena for signature.

Counter Offer – The Commissioners signed a Counter Offer for Neil and Jeanne Chaput de Santonge for Lot 4, Block 2, Missoula Development Park. Sales price to be \$105,000.00. The Counter Offer was returned to Don Sokoloski at Properties 2000.

Agreement – The Commissioners signed an Agreement with the City of Missoula Parking Commission for enforcement of motor vehicle parking regulations in the County parking lots in the 200 and 300 blocks of West Alder. Payment shall be \$2,000.00 per year. Term of the Agreement is for five years. The Agreement was forwarded to the City for signatures and return.

Revised Development Agreement – The Commissioners approved and signed a Revised Development Agreement at a departmental meeting with the Office of Planning and Grants. The Agreement is for Kriskovich Acres Subdivision, and involves a Riparian Resource Management Plan for the subdivision. It was returned to Tim Wolfe at Territorial Engineering and is to be filed with the plat.

Other items included:

- 1) The Commissioners and Doug Kueffler of the City Engineering Office discussed access to the Courthouse parking lot off Pine Street during construction of the new Mountain Line Transfer Station.
- 2) The Commissioners and Paul Webber discussed requests made by the District Judges regarding available space in the Annex basement when the Jail Transition Team vacates.
- 3) The Commissioners discussed a letter from William Evan Jones of Garlington, Lohn and Robinson regarding Frontier West's lawsuit against the State of Montana – and, by agreement, Missoula County – regarding the realignment of a railroad bridge near the Missoula County Airport. They authorized Deputy County Attorney Mike Sehestedt to draft a response to the letter.

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

WEDNESDAY, JULY 28, 1999

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

Audit List – The Commissioners signed the Audit List, dated July 27, 1999, batch numbers 29, 31, 36, 37, 38, 41, 42, 43, 44, 45, 47, 49 and 55, with a grand total of \$301,955.68. The Audit List was returned to the Accounting Department.

Resolution – The Commissioners signed Resolution No. 99-049, a resolution to approve a planned variation for property described as Pleasant View Homes Subdivision.

PUBLIC MEETING – July 28, 1999

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

Public Comment

Ed Mayer, Director of the Missoula Housing Authority, provided the Commissioners with copies of the Missoula Housing Authority's Annual Report which details the Housing Authority's activities and accomplishments for Fiscal Year 1998. This report was also included as an insert to the Missoulian in last Sunday's paper. The Housing Authority is embarking in two new directions, based on their strategic planning work. First, the Housing Authority is attempting to manage its assets so they can more effectively meet the demands of the community. They own a large number of single family homes in the community. They have a small 3 and 4 bedroom waiting list and the 2 bedroom waiting list is growing. The idea is to sell some of their single family houses and use the proceeds to purchase and develop new housing stock which reflects the demand. The Housing Authority has purchased two properties in the city in the past year and are negotiating on a third at the present time. The second direction the Commissioners set for the Housing Authority this year is take more of an advocacy role in the community relative to community housing policy and direction. They provided housing data collected over the last five years. They are attempting to establish data with which they can make decisions relative to community housing policy. If the Commissioners want to review the data, he would be happy to set a separate meeting to do that rather than take their time today. The data tries to dispel myths and base information on fact. It has some important implications for the direction the Commissioners may set for the Office of Planning and Grants. He thanked the Commissioners for their past support with the Shelter Plus Care program, a rental assistance program for the homeless disabled in the community.

Commissioner Carey stated he was impressed with the publication of the report in the newspaper. He felt they had been doing a great job. He was glad to hear the Board is urging them to be more active in advocating on behalf of the housing crisis in affordable housing. He is interested in helping to develop a housing cooperative and hoped some of OPG's time could be used to that end. He asked where the Housing Authority stood with regard to the purchase of Parkside Apartments?

Ed Mayer stated the Housing Authority is still involved with that purchase. Parkside Village Apartments is a 105 unit apartment complex located on Southwest Higgins. It was subject to a 25 year contract with HUD and is privately owned. The contract insured affordability of the project for the 25 year period. The owner has opted out of the HUD contract and the Housing Authority, with a for profit partner, has put together a buy/sell agreement to purchase the property. The closing is currently scheduled for the second week of August.

Commissioner Carey stated the Missoula Food Bank has an extensive amount of data on housing and it might be worthwhile for the Housing Authority to contact them to view the data.

Chair Kennedy stated Commissioner Carey's comment about the cooperative might be the stimulus needed to move beyond the discussion stage. There is also community interest in this cooperative.

Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$301,955.68. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Hearing: Petition to Vacate a Portion of Judi Drive (East Missoula)

This is a petition to abandon Judi Drive from the lot line common to Lots 2 and 3, Block 2 to the end of Judi Drive at the north boundary of Art Pine Addition located in the N 1/2 of Section 24, Township 13 North, Range 19 West, P.M.M., Missoula County, Montana (East Missoula).

The reasons for the request are as follows:

1. Art Pine Addition was platted some 40 years ago, however only three of the lots in the subdivision were ever built on (Lot 2, Block 1 has two homes on it, and Lots 1 and 2, Block 2 have one house for the two lots). Although dedicated to the public, Judi Drive (originally platted as Sunset Lane) was never constructed to County standards, and never accepted by Missoula County for maintenance.
2. The Easterly ± 100 feet of Judi Drive is presently a gravel drive sufficient to serve the existing homes, however the balance of this road has never been constructed. The "L" portion of Judi Drive that turns and runs north to the north boundary of the subdivision dead-ends into the balance of the Reich's ownership, and serves no useful purpose as they gain access via Staple Street, and Utah Street also dead-ends into their property.
3. The Reichs are proposing to vacate the unconstructed portion of Judi Drive and to relocate the boundaries between their three lots and the unnecessary drainage easement parcel such that they will end up with four lots that are all in excess of 20,000 square feet, and with Mountain Water service available, should be approvable by the Department of Environmental Quality as homesites.
4. This road vacation and relocation of lot boundaries will straighten out a bit of a mess that has existed for years, and convert what have been unbuildable lots (due to their size), into four usable "infill" building lots.

Dick Ainsworth, Professional Consultants Incorporated, stated he was representing Marvin and Doris Reich who have petitioned to vacate a portion of Judi Drive in the Art Pine Addition. The portion of the road they are requesting to vacate is adjacent to lots they own in the subdivision. The portion to be vacated would not impact any other property owners. There is also a request through the County Attorney's Office to do a boundary relocation to create 4 lots in conjunction with this vacation. The ultimate goal is to relocate the boundaries of these odd shaped lots which are too small to support a dwelling and septic system. Mr. Reich was available to answer any questions the Commissioners might have.

Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Chair Kennedy stated the process on this hearing involves a site inspection with the County Surveyor and one of the three Commissioners, who will then come back with a recommendation. The decision will be made at a later date. He asked Mr. Reich why the driveway was excepted from the petition? The Board was concerned about permanent access to all lots in Missoula County.

Marvin Reich stated it comes to a dead end and squares off the property. He would like to straighten out the boundaries and do something with the property. One of the lots has had a percolation test and is currently saleable. He would like to create 4 half-acre lots and have the lot owners take care of their own driveways.

Chair Kennedy offered an alternative to vacate the northerly section of Judi Drive past the "L." This still provides an opportunity to divide the lots and leaves a dedicated roadway for access to all the lots. Did that create an issue for him?

Marvin Reich stated he would like to have 4 half-acre lots that would come off Judi Drive on a privately maintained road. Utah Street and Staple Street dead end at his ranch. He felt the location of Judi Drive was a mistake when this area was subdivided and he would like to clear up the mistake. He would like to get the County off the hook for maintenance.

Chair Kennedy asked if any of the signers of the petition were residents of adjacent lots?

Marvin Reich stated they were not.

Horace Brown stated he did not believe the County maintained Judi Drive. If it should be maintained in the future, a cul-de-sac would be needed at the end to turn around.

Chair Kennedy stated a time would be set to visit the site. After the site visit, a decision can be made. The Board will set the decision for next Wednesday, August 4, 1999.

Dick Ainsworth asked if the Commissioners would like Mr. Reich to meet them for the site inspection.

Chair Kennedy stated it was not necessary, but Mr. Reich was welcome to be present at the site inspection. The inspection was set for 1:30 p.m. on Monday, August 2, 1999.

Hearing: Petition to Rename Alice Avenue (Target Range area)

This is a petition to rename Alice Avenue located in Roseland Orchard Tracts No. 4 in the NW 1/4 of Section 25, Township 13 North, Range 20 West, Missoula County, Montana.

The reasons for the request are as follows:

- 1. The street is listed on most legal documents as Alice Lane.
- 2. The street sign says Alice Lane.
- 3. The street is recognized by government agencies, including the Missoula County Clerk & Recorder’s Office and the County Surveyor’s Office as Alice Lane.

Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans asked what problems it was causing that it is legally called Alice Avenue when everybody wants to call it Alice Lane?

Horace Brown stated it was signed Alice Lane and it is known in the Clerk and Recorder’s books as Alice Lane.

Commissioner Evans asked if there would be a lot of paperwork that would need to be changed?

Horace Brown stated there would not be a lot of paperwork. If it is left as Alice Avenue, it would cause a lot of paperwork to be generated.

Commissioner Evans moved that the Board of County Commissioners approve the petition to rename Alice Avenue, located in Roseland Orchard Tracts No. 4 in the NW 1/4 of Section 25, Township 13 North, Range 20 West, to Alice Lane. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Chair Kennedy suspended the Public Meeting at 1:50 p.m. and said the meeting would reconvene at 2:30 p.m. for the Final Hearing on the Fiscal Year 2000 Budget.

Final Hearing on Fiscal Year 2000 Budget

Chair Kennedy reconvened the Public Meeting at 2:30 p.m. for the Final Hearing on the Fiscal Year 2000 Budget.

Jane Ellis, Chief Financial Officer, presented a summary of the budget. She stated the budget process was not quite completed yet. It will be complete by next Monday, August 2, 1999, at 10:30 a.m., when the Commissioners adopt the budget. The total budget for FY 2000 currently is \$49.7 million as compared to \$62.7 million for FY 1999. The difference between the two is primarily capital projects, the Partnership Health Center building and the new detention center. The FY 2000 amounts for those two projects are not completely loaded yet but will be significantly smaller than they were for FY '99. The total budget will be approximately \$54 million when the capital projects are loaded.

The General Fund for FY 2000 is \$16.1 million as opposed to \$14.2 million for FY '99. The big difference is the addition of operations of the new detention facility. The increase in costs is being covered by an increase in non-tax revenue, the contract with the state for housing state prisoners.

The FY 2000 budget had some fairly significant challenges. Initially, the General Fund was approximately \$790,000 short in resources versus the FY '99 budget. In addition, there were requests for new funding of \$754,000. Support for the operational costs of the new juvenile wing of the detention center had not been determined yet, requiring approximately \$250,000 more than the County expended on juvenile detention in FY '99. Finally, the legislature has made some significant changes in property taxation.

As of today, the responsible state agencies are still working on implementation of those changes. Consequently, this budget is being prepared using estimates of mill values, property tax revenues and reimbursements from the state. The Commissioners will adopt a resolution to establish the spending authority for FY 2000 on August 2, 1999. The mill levies will be set later after the mill values have been received from the state. It is the intention of the Commissioners to levy the certified mill levy as determined by the Department of Revenue, the maximum the County could levy. Any resources available above the adopted spending authority would be added to the Cash Reserves. The Cash Reserves are only 2.5% for this budget.

The solutions found for the FY 2000 budget included: 1) an additional \$450,000 from the Development Park; 2) Justice Court fines anticipated to be at least \$100,000 higher than FY '99; 3) an increase in the local option motor vehicle tax; 4) the new Aging levy allowing .44 mills to be transferred to the General Fund; 5) reductions in the Road, Bridge, Poor and Fair funds that were transferred to the General Fund; and 6) possibly leasing some available space in the Juvenile Detention Center to other counties.

The issues that are still remaining include: 1) the final resolution of the Juvenile Detention budget; and 2) reductions in funding made in the Road and Bridge funds.

Chair Kennedy opened the public hearing. The following people spoke:

SPEAKER’S NAME	IN SUPPORT OF
Karyn Collins	Partnership Health Center

Chair Kennedy stated that there was a publishing error in the time of today’s Budget Hearing. In light of that fact, he suspended the Public Meeting and Budget Hearing at 2:40 p.m. and said the meeting would reconvene at 3:00 p.m.

Chair Kennedy reconvened the Public Meeting and Budget Hearing at 3:00 p.m. The following people spoke:

SPEAKER'S NAME	IN SUPPORT OF
Michelle Landquist	Lolo Community Council
Margaret Watson	Emergency Services, Mental Health Center
Tina Gottfried	Family Basics Program, WORD (Rent Stabilization and Security Deposit Program)
Carrie Kendrick	WORD (Rent Stabilization and Security Deposit Program)
Rena Lewis	Missoula Food Bank
David Washburn	Emergency Services, Mental Health Center
Kate Sullivan	Art Museum
Cindy Bartling	Friends to Youth
Jay Palmatier	Crisis Response Team, Mental Health Center
Susan Kohler	Missoula Aging Services
Gene Duran	Emergency Services and Crisis Response Team, Mental Health Services
Eric Taylor	Salvation Army
Kay White	Community Care, IN-SITE Program

Chair Kennedy suspended the Public Meeting and Budget Hearing at 3:30 p.m. and stated it would reconvene at 7:00 p.m. at the Public Library. He stated the Budget would be adopted next Monday, August 2, 1999, at 10:30 a.m.

Chair Kennedy reconvened the Public Meeting and Budget Hearing at 7:00 p.m. at the Public Library.

Jane Ellis, Chief Financial Officer, presented a summary of the budget. She stated the budget process was not quite completed yet. It will be complete by next Monday, August 2, 1999, at 10:30 a.m., when the Commissioners adopt the budget. The total budget for FY 2000 currently is \$49.7 million as compared to \$62.7 million for FY 1999. The difference between the two is primarily capital projects, the Partnership Health Center building and the new detention center. The FY 2000 amounts for those two projects are not completely loaded yet but will be significantly smaller than they were for FY '99. The total budget will be approximately \$54 million when the capital projects are loaded.

The General Fund for FY 2000 is \$16.1 million as opposed to \$14.2 million for FY '99. The big difference is the addition of operations of the new detention facility. The increase in costs is being covered by an increase in non-tax revenue, the contract with the state for housing state prisoners.

The FY 2000 budget had some fairly significant challenges. Initially, the General Fund was approximately \$790,000 short in resources versus the FY '99 budget. In addition, there were requests for new funding of \$754,000. Support for the operational costs of the new juvenile wing of the detention center had not been determined yet, requiring approximately \$250,000 more than the County expended on juvenile detention in FY '99. Finally, the legislature has made some significant changes in property taxation.

As of today, the responsible state agencies are still working on implementation of those changes. Consequently, this budget is being prepared using estimates of mill values, property tax revenues and reimbursements from the state. The Commissioners will adopt a resolution to establish the spending authority for FY 2000 on August 2, 1999. The mill levies will be set later after the mill values have been received from the state. It is the intention of the Commissioners to levy the certified mill levy as determined by the Department of Revenue, the maximum the County could levy. Any resources available above the adopted spending authority would be added to the Cash Reserves. The Cash Reserves are only 2.5% for this budget.

The solutions found for the FY 2000 budget included: 1) an additional \$450,000 from the Development Park; 2) Justice Court fines anticipated to be at least \$100,000 higher than FY '99; 3) an increase in the local option motor vehicle tax; 4) the new Aging levy allowing .44 mills to be transferred to the General Fund; 5) reductions in the Road, Bridge, Poor and Fair funds that were transferred to the General Fund; and 6) possibly leasing some available space in the Juvenile Detention Center to other counties.

The issues that are still remaining include: 1) the final resolution of the Juvenile Detention budget; and 2) reductions in funding made in the Road and Bridge funds.

Chair Kennedy asked for public testimony. The following people spoke:

SPEAKER'S NAME	IN SUPPORT OF
Kelly Rosenleaf	Child Care Resources
Shannon Parker	Community Exchange, SSI
Joni Stormo	Court Appointed Special Advocates (CASA)

Chair Kennedy closed the Public Hearing. He stated the FY 2000 Budget would be adopted next Monday, August 2, 1999, at 10:30 a.m.

There being no further business to come before the Board, the Commissioners were in recess at 7:20 p.m.

THURSDAY, JULY 29, 1999

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

ADMINISTRATIVE MEETING

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

Agreements – Chair Kennedy signed two Agreements for Engineering Services:

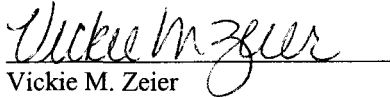
1. Missoula County Golden West Wastewater Facilities Early Actions, with compensation not to exceed \$1,723.00;
2. Missoula County El Mar Estates Wastewater Facilities Early Actions, with compensation not to exceed \$11,068.00.

Both Agreements were returned to Paul Webber, CAO, for further signature and handling.

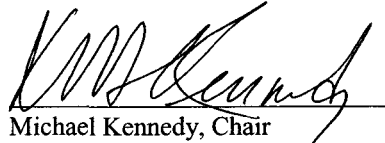
The minutes of the Administrative Meeting are on file in the Commissioners Office.

FRIDAY, JULY 30, 1999

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



Vickie M. Zeier
Clerk & Recorder



Michael Kennedy, Chair
Board of County Commissioners

MONDAY, AUGUST 2, 1999

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

Monthly Report – Chair Kennedy examined, approved, and ordered filed the Report of the Clerk of District Court, Kathleen Breuer, for the month of July, 1999.

Categorical Assistance Progress Report – Chair Kennedy signed a Categorical Assistance Progress Report for the Missoula County Rural D.V. Program, grant amount of \$337,154.00. The report was returned to Leslie McClintock in OPG for further handling.

Adoption of FY2000 Budget

RESOLUTION NO. 99-050
ADOPTING A BUDGET FOR MISSOULA COUNTY
FOR FISCAL YEAR 1999-2000

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 1999-2000, as required by law; and

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

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

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

WHEREAS, SUCH MILL VALUES are not currently available as a result of legislative changes in the property tax system;

NOW, THEREFORE, BE IT RESOLVED, that the final County Budget for Fiscal Year 1999-2000 be as set out in Attachments A and B, and the same is hereby adopted as the final budget, subject to the conditions set forth below.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the levies as detailed below be fixed and adopted for Fiscal Year 1999-2000, based on the projected mill values and projected State reimbursement.

BE IT FURTHER RESOLVED that the projected mill levies will be adjusted either up or down as required to fund the adopted budget when actual mill values are received and the amount of State reimbursement is established.

<u>MISSOULA COUNTY-WIDE FUNDS</u>	<u>MILLS</u>	<u>ATTACHMENT</u>
General Fund	46.19	A and B
Bridge Fund	3.84	
Poor Fund	3.28	
Fair Fund	.29	
Museum Fund	1.88	
Extension Fund	1.25	
Weed Fund	0.65	
Planning Fund	2.00	
District Court Fund	6.07	
Mental Health Fund	0.47	
Aging Fund	1.00	
Park/Recreation Fund	.31	
Risk Management	1.89	
Child Daycare	0.30	
Library	<u>5.00</u>	
<u>SUB-TOTAL</u>	<u>74.42</u>	
<u>MISSOULA COUNTY-WIDE DEBT SERVICE</u>		
Jail	8.73	
G O Issue (Computer)	<u>1.00</u>	
<u>SUB-TOTAL</u>	<u>9.73</u>	
<u>TOTAL COUNTY-WIDE & DEBT SERVICE LEVIES</u>	<u>84.15</u>	

Road Fund	13.83
Health Fund	6.47
Animal Control	<u>.83</u>

<u>TOTAL COUNTY-ONLY LEVY</u>	<u>21.13</u>
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The attachments for Resolution No. 99-050 are on file with the original Resolution in the Clerk and Recorder's Office.

Site Inspection – In the afternoon, Commissioner Evans accompanied County Surveyor Horace Brown on site inspections of a GLO Road in Potomac and Judi Drive in East Missoula for requests to vacate portions of these roads.

TUESDAY, AUGUST 3, 1999

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

Claims List – The Commissioners signed the Claims List, dated July 30, 1999, batch numbers 50, 51, 56, 57, 58, 59, and 60, with a grand total of \$146,034.25. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated August 2, 1999, batch numbers 65, 72, 69, 71, 63, 64, 67, and 68, with a grand total of \$499,283.87. The Claims List was returned to the Accounting Department.

Monthly Report – Chair Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for Justice Court 1, John Odlin, for the month ending July 31, 1999.

Payroll Transmittal – The Commissioners signed a Missoula County Payroll Transmittal for Pay Period 14, with a total Missoula County Payroll of \$654,303.54. The Payroll Transmittal was returned to the Auditor's Office.

ADMINISTRATIVE MEETING

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

Resolution – The Commissioners signed Resolution No. 99-051, an emergency proclamation regarding hazardous fire conditions in Missoula County, proclaiming an emergency exists as of August 5, 1999.

Extension – The Commissioners approved a six-month extension for Northgate Development Park Subdivision, making the new filing deadline March 9, 2000, with a letter to John Kellogg of PCI.

Professional Services Contract – The Commissioners signed a Professional Services Contract with Feather Sherman for the Youth Peer Education Project in Seeley Lake. Performance schedule is August 1, 1999 through December 31, 1999. Compensation shall not exceed \$2,400.00.

Standard Agreement – The Commissioners signed a Standard Agreement with Talco Electrical Construction, Inc. for fiber optics and category 5 wiring for the new Detention Center. Work shall be completed within 40 consecutive calendar days from receipt of a written "Notice to Proceed." Contract sum is \$37,250.00, plus \$375.00 for Amendment #1. The Agreement was returned to Bob Schieder in the Detention Center for further handling.

Standard Agreement – Chair Kennedy signed a Standard Agreement with the Traffic Safety Bureau of the Montana Department of Transportation for DUI Room equipment for the new detention center. Contract sum is not to exceed \$10,000.00. Project shall be completed no later than September 30, 1999. The Agreement was returned to Don Morman in the Sheriff's Department for further signatures and handling.

Other items included:

- 1) At a Departmental Meeting with the Office of Planning and Grants, the Commissioners administratively approved Rothmar Subdivision for Lease or Rent, on South Canyon Drive east of Seeley Lake, with a letter to Conrad Collins.

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

WEDNESDAY, AUGUST 4, 1999

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

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Buy.com as principal for Warrant #033592 issued 5/20/99 on the Missoula County General Fund in the amount of \$1846.30 now unable to be found.

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming L'Heureux Page Werner, PC as principal for Warrant #52396 issued 3/10/99 on the Missoula County Urban Transportation Fund in the amount of \$2837.55 now unable to be found.

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Tawnee Hibbert as principal for Warrant #23742, issued 6/16/99 on the Missoula County General Fund in the amount of \$57.34, not received in the mail.

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Mountain Line as principal for Warrant #53101, issued 6/25/99 on the Missoula County Urban Transportation Fund in the amount of \$110,006.70, not received in the mail.

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Tamra Hatch as principal for Warrant #38572, issued 6/30/99 on the Missoula County Payroll Fund in the amount of \$377.86, not received in the mail.

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Ryan Galbavy as principal for Warrant #255989, issued 7/2/99 on the Missoula County Payroll Fund in the amount of \$522.77, not received in the mail.

PUBLIC MEETING – August 4, 1999

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioner Barbara Evans, Commissioner Bill Carey, County Surveyor Horace Brown, Clerk & Recorder Vickie Zeier and Chief Civil Attorney Michael Sehestedt.

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$645,318.12. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Decision: Petition to Vacate GLO Road (Potomac Area) - Kittleman

This is a petition to abandon GLO road located approximately from the center of Union Creek to the southerly half of Section 11 in Section 11 and 14, Township 13 North and Range 16 West, P.M.M., Missoula County, Montana.

The reasons for the request are as follows:

1. It is very unlikely this road ever existed as drawn on the map, given the topography involved.
2. A road in this location would serve no logical purpose, and would adversely affect property values.

The Public Hearing on this matter was held on July 14, 1999. A site visit was conducted by Commissioner Evans and County Surveyor Horace Brown on Monday, August 2, 1999. The decision will be made based on their recommendation.

Horace Brown stated the people affected include the Hayes Ranch and the Potomac Family Inc. land. There is no sign of a road and he did not see a use for it. The adjacent properties have been notified and he proposed that the road be vacated.

Commissioner Evans stated she concurred with Horace Brown recommendation. During the site visit, it was difficult to identify where the road might be.

Commissioner Evans moved that the Board of County Commissioners abandon GLO road located approximately from the center of Union Creek to the southerly half of Section 11 in Section 11 and 14, Township 13 North and Range 16 West, P.M.M., Missoula County, Montana, in that it does not appear to be a road that ever existed or should exist. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Consideration: Sweet Water Hills (4 lots) – West of Cote Lane

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

This is a consideration of the Sweet Water Hills Summary Subdivision. The applicants, Sylvan Investments, LLP, are requesting approval to divide a 98.49 acre parcel into 4 lots, ranging in size from 23.24 acres to 25.47 acres. The property is located about three miles west of Reserve Street, south of Mullan Road and approximately 1/4 mile west of Cote Lane.

The land is located in the clay hills area with gently rolling topography and drainages that run east/west across the property. It is zoned C-RR1 (Residential) and Kona East Residential with a maximum residential density of one dwelling unit per acre. The 1998 Missoula Urban Comprehensive Plan designates Residential land use with a density of up to 2 dwelling units per acre. Both zoning districts as well as the subdivision regulations specify lot width of one-third of the average depth and the applicant has requested a variance from this subdivision requirement. Staff is recommending approval of that variance request. A variance from the County Board of Adjustment will also be required as noted in Condition 1.

The property was once part of the Kona Ranch and is currently used for some farming. The applicants have stated that there is no additional development planned for the property at this time. There are 1 acre residential lots located to the east in the Kona East River Heights and River Heights Phase II Subdivisions, and 1/4 acre lots located to the north in El Mar Estates. There are large tracts of undeveloped land located to west and south.

Access to the property is provided via Cote Lane to either Lazy H Trail or Haven Heights Road. New driveways will serve each lots. Both of those roads are County maintained within 60 foot public rights-of-way and are paved to a 24 foot width and end in cul-de-sacs. Conditions 3 and 4 require RSID waivers for improvements and the creation of a road maintenance district for the roads accessing the subdivision.

Lots 1 and 2 would be served by driveways exiting from Lazy H Trail and Lots 3 and 4 by driveways exiting from Haven Heights Road. There are 100 foot private access easements shown for the first 200 feet along the boundaries between Lots 1 and 2 and Lots 3 and 4.

Amended Condition 5 requires paving that portion of any driveway that is located between the cul-de-sac and the property line. Bill Lindstrom at Missoula Rural Fire District stated that the soil in the area is very unstable, especially when it rains, and that driveways will need to have a 20 foot wide all weather surface with approved turnaround and engineered to support 80,000 pounds. He stated that paving would be one solution for at least a portion of the width. Condition 5 addresses driveway design, including maintenance of the driveways.

The applicant has stated that no change in the drainage is expected due to the size of the lots and there is a general drainage plan included in the application. Conditions 5 and 6 also require the County Surveyor's Office review and approval of grading and drainage plans.

There are limited sidewalks or pedestrian access facilities in the area near the proposed subdivision. The applicant has requested a variance from the requirement to provide those. Staff is recommending approval of the variance request based on the findings of fact in the staff report.

The topography is generally rolling with the steeper slopes located toward the western portions of the property. Condition 2 requires that slopes greater than 25% be shown as no-build zones. There are several drainages running east/west through the property. Potential homesites shown in the application are located in relatively level sites. Staff is recommending that the driveways run along the drainages rather than crossing them and that site development not impact those drainages. There is also a recommendation that noxious weed control measures be included in the covenants as a condition of approval.

There are individual well and septic systems proposed for the lots and the Health Department has stated that in light of past problems in the area with drainfields in that soil type and in this area, that there will have to be very careful consideration to the sizing, location and construction of drainfields. Due to problems with existing systems in the El Mar Estates area, it is possible that City sewer will be extended to that area sooner rather than later. Condition 8 requires a waiver of the right to protest and RSID/SID for connection to a sewer system. Other discussions have been held with the Health Department and the Board about the feasibility of septic systems in this area.

OPG received a call from an adjacent property owner who was very concerned about any new septs being approved in the area. The only other public comment received was from the River Heights Homeowners Association, who stated the concern about long, unpaved driveways creating air quality problems due to prevailing west winds. The Association also stated that it would be opposed to future subdivisions of these parcels until City sewer or other measures solved the sewage problems in the area.

Staff is recommending approval of both variances and approval of the subdivision with 10 conditions and the amendment to Condition 5.

Nick Kaufman, WGM Group, was present representing Sylvan Investments. He called the Board's attention to the aerial photo of the area that showed the general land use pattern around the property. Along the north side is El Mar Estates, developed at about 3 to 4 dwelling units per acre. The lagoon system of the El Mar Estates Sewage Treatment Facility, built through a County RSID, is visible. Along the east side is the River Heights and Haven Heights 1 acre tracts subdivisions. Cote Lane is also visible and the road systems come off Cote Lane through the subdivisions and two cul-de-sacs dead end against the property as do two common areas. The lot lines follow two natural features on the property, they follow ridge lines and drainage lines which run generally east and west. The intention for that design is that the road system in the future, should capital facilities become available, could be extended, as well as the linear park systems which exist now. When this application was prepared, letters were sent to El Mar Estates Homeowners Association, River Heights and Haven Heights Homeowners Associations. He had also spoke with the president of one of these associations. A meeting was also held with Peter Nielsen from the City-County Health Department to find out what would be required in terms of any on site sewage disposal. The Health Department felt the 20 acre tracts would provide adequate room for siting of drainfield systems at the time the homes were proposed. He asked the Commissioners to recall their recent approval of Rolling Hills Subdivision, some miles north but with the same topography. The Health Department has approved the use of on site disposal systems using special techniques and information they have developed over the years. One of the considerations that is important is getting 100 acres of land waiving their right to protest future RSID/SID for the extension of sewer into this area, as well as water systems and road systems. It is a very low density subdivision. It allows the option in the future for extension of facilities through the project and conditions require that this property financially be part of the extension of capital facilities into that area when that solution is proposed.

Chair Kennedy opened the public hearing.

Brian Miller, 1620 Cresthaven, stated he had a conversation with Nancy Heil last week regarding the sewage issues he is concerned about in this subdivision. He has lived in the area for 5 years and there are a lot of homes that have sewage problems. Construction seems to continue without any effort toward resolving these problems. He was not in protest of the expansion of this subdivision but was in protest of the drainfield systems. He felt the sewage issue should be taken care of as soon as possible. He challenged Peter Nielsen from the Health Department to visit in the spring when there are a lot of problems with the snow load and rain runoff. A lot of homes have raw sewage in their yards during this time. Peter Nielsen's recommendation was to put in a second drainfield. His lot is one acre in size so that could be done, but that would shift the problem from one drainfield to another. He has had two problems in the five years he has lived there. He had Nick Kaufman look at the problem one year and attempt to come up with some solution. He had Peter Nielsen out three or four times attempting to solve the problem. There is really no answer other than the ground will accept the water to be absorbed. Peter Nielsen's latest solution was to install a \$4,000 pump back system that would force the water to stay in the drainfield and keep it out of his home. That would only be a temporary fix at best. There would still be problems in the spring. A lot of his neighbors are also experiencing problems.

Drake Lemm stated he was the developer of Rolling Hills Subdivision that Nick Kaufman had referred to. The problems he is experiencing getting sanitary restrictions lifted will be similar for Sweet Water Hills. The State Department of Environmental Quality changed the restrictions on drainfields. Originally they were allowed to drill three percolation tests and a composite of those three tests was used to determine if it was suitable for a drainfield site. That has been changed to those same three percolation tests but the worst case scenario of the three is used, which makes it much more stringent. That caused him to revise expectation for sewer systems on Rolling Hills. They are dealing with the problem and it looks like it will be resolved. They are proposing a dosage system, dual tank septic that has a pump system. It pumps from the second compartment of the septic tank into a sand filter. It filters through the sand filter then it goes to another pump. From that pump it is pumped into the drainfield. The drainfield is 700 lineal feet with two zones. One zone is used for six months then it switches to another zone for six months. He had done a lot of drainfield in the past and the biggest one he ever put in was 350 lineal feet. His point is that the DEQ is looking very closely at drainfields in clay soil types. What he is proposing and what is likely to be accepted is a very comprehensive and elaborate system that could work for Sweet Water Hills also.

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

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision; and approve the variance request from Section 3-3(1)(E) of the Missoula County Subdivision Regulations that states that no lot shall have an average depth greater than 3 times its average width, based on the findings of fact set forth in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the Sweet Water Hills Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report.

Commissioner Evans seconded the motion but asked the County Attorney for language for a hold harmless clause to be included on the plat.

Chair Kennedy clarified the motion to approve the subdivision included amended Condition 5.

Michael Sehestedt stated there are particular issues with the indemnity and hold harmless language. In this case, one of the issues, about which there may be some debate, is the capacity of the ground to accept subsurface sewage disposal. He hesitated to do an open ended clause, he was not sure what this would indemnify or hold the County harmless from. A clause such as was included with Pleasant View Homes could be used. That required certain aspects where the Board believed there was an issue to be certified by a consulting engineer that it will in fact meet the condition, perform as represented and require that the engineers certification provide evidence of errors and omissions insurance which would indemnify Missoula County from any damages as a result of an approval based on the engineers certification. Suggested language was: "The developer agrees to defend, indemnify and hold Missoula County harmless from any claim which might be asserted against Missoula County as a result of the approval of this plat or development thereon." He was not sure that would be effective.

Commissioner Evans stated the language sounded fine to her and she moved that the Board of County Commissioners accept it as part of the conditions.

Michael Sehestedt stated it does not do any particular harm, but he did not want to misrepresent to anyone that he had a firm opinion about its efficacy.

Commissioner Evans stated it may not be efficacious but she felt it was important that the Board start toward this goal. She realized it was short notice but she would like to have such language on the plat and in the subdivision approval.

Chair Kennedy stated Commissioner Evans' concern was shared by the entire Board. Under the way the regulations are written some feel there is liability exposure that accrues to the general citizens of Missoula County as a result of development proposals from private interests. It seemed odd but that was, in fact, the case. A high percentage of the law suits filed against Missoula County in recent years have to do with septic tank failure. By approving subdivision the way the regulations are currently written, the County is exposed to those potential lawsuits, because the Board is supposed to be the judge of whether or not a subdivision will do what it is supposed to do, rather than the development interest itself. Commissioner Evans' concern is well founded. Whether or not the County can get out of this by simply adding these words is problematic. The language might not hurt, but he was not sure it would cure much.

Commissioner Evans stated the Board looks at the material given to them by professionals. The decisions they make are based on the information they received from these professionals. Making a decision based on professional recommendations is all the County should be held liable for. Some language that holds Missoula County harmless when they have done their due diligence makes sense.

Nick Kaufman stated that subdivisions come before the Board on a regular basis. This idea may or may not be new policy, but it was new to him. Michael Sehestedt second suggestion seemed preferable since this plat has no engineering, there is no extension of roads or sewer and water. He felt that if this is something that weighs on the Board's mind, it is certainly worth some thought and consideration about the language and how it will be applied. This would be better than a thought after public testimony on a subdivision on Wednesday. He had not had a chance to think about the language proposed. He was not diminishing the concern. However, if it is a large concern, it is worth some discussion and consideration for application instead of drafting the language today and applying it to this subdivision. He asked if Michael Sehestedt could repeat the wording.

Michael Sehestedt stated the general language proposed would be standard indemnity language, such as: "The developer, their successors, heirs and assigns, agreed to defend, indemnify and hold harmless Missoula County, its agencies, officers and employees, from any claim which may be made based on or resulting from the approval of this subdivision." It would not be based on the County's sole negligence, that is necessary to make it an effective indemnity clause. This does address, to some degree, the claim of joint and several liability between the County and the developers, the engineering

firm for the developer and others, depending on the particular problem. This simply says there may be joint and several liability between the parties facing the aggrieved citizen, but the County is entitled to indemnity if they do what the developer has asked.

Nick Kaufman used the example of a subdivision being done, Mr. and Mrs. "X" buy a lot and they come to the County Surveyor's Office for an approach permit. The Surveyor's Office looks at it and a driveway culvert is not required as it is at the top of the ridge and no one expects it will be needed. Two years later there is an unexpected weather event and the driveway washes out. The developer, their assigns and heirs have held Missoula County harmless for any action. Similarly, it is the Missoula City-County Health Department that would permit any homes or drainfields on a site, irrespective of the developer and irrespective of the engineer. When it is said Missoula County will be held harmless for anything, that tell him they have no responsibility for anything and what the County is doing is charging people money to review plans for drainfields and driveways, charging people money for permits to review and approve those things. At this point, he could not accept, on behalf of the developer, this language.

Michael Sehestedt stated his precise language was arising out of the approval of this subdivision, not based on the County's sole negligence. If the County is on the hook alone, it is on the hook alone given that language. He used the example of a subdivision proposal that said in recognition of high ground water in the area, it is required that no basements be constructed. The developer made that representation in their application for subdivision approval. The subdivision goes on record and that requirement isn't included in the final filing documents. Then there is a high ground water event and basements are flooded. Those with flooded basements start looking for someone to make them better for damages suffered. They will look to the County for letting it go of record without that requirement in it, they will look to the realtor who didn't warn them about it and they will look to the developer who also didn't warn them about it. With this proposed language in place, Missoula County, on that particular set of facts, would be entitled to indemnity from the developer. On the other hand, with this language in place, if the state lifts sanitary restrictions and some County agency negligently approves a drainfield, then the County may have some exposure, if there is a breach of duty. In other cases, where the County relies on information provided by others, they would still look for indemnity based on the actual facts of the case. There have been occasional problems where things that have been promised and a subdivision approved based on the promise, those things haven't happened or there has been engineering testimony and it turns out that testimony isn't borne out by subsequent actions of the developers or subsequent facts, then people start looking around to make a claim and the County is included on the list. The County is saying that the developer is the one asking the County to do this. If the County does it because the developer certified or represented to the County that it would be fine, the County wants the developer to stand behind its certification. The County does not want to leave the general taxpayers holding the bag because the County believed the developer. He let Mr. Kaufman know that in this scenario, the "developer" was used in a generic way, not specifically referring to Mr. Kaufman. Because the County relied on the word of the developer and the representations of the developer and it turned out the representations were inaccurate or they did not do what they said they were going to do, that is what the County is looking for. He was not sure if the proposed language did that or not.

Chair Kennedy asked if the proposed language would protect the County in regards to the joint and several liabilities law?

Michael Sehestedt stated no matter how the liability is portioned, if it is not due to the County's sole negligence and arises out of the approval of the subdivision, it lets the County go back to the developer, their heirs, successors or assigns and recover both the cost of defense and whatever amounts might be awarded against the County. If the developer cannot be found, their successors or assigns would be the property owners who bought in that subdivision. It may make it less attractive to sue because there would not be a "deep pockets" defendant.

Chair Kennedy stated it also suggested that if there were multiple defendants without that language, all of whom settle, and the County is only a remote defendant or a named third party, it might protect against the instance where the County might be left by themselves as a sole defendant.

Michael Sehestedt stated he hoped it would have that effect. This came up just recently and he has not had a chance to think it through thoroughly. He felt it would not do any harm. He was not making any representations as to how effective it would be in protecting the County from liability.

Nick Kaufman stated it was clear to him the County has a legitimate concern. It was also clear the County was not ready at this time to put forth language on this subdivision. Without language to review, he cannot accept the proposed language about indemnifying the County on this subdivision. They went through this process in good faith based on the criteria currently in force. He asked the subdivision be approved per the original recommendation. They could not accept the quickly written indemnity language. He felt the Commissioners should not either. This is an important enough issue that the time should be taken to create the policy and language.

Chair Kennedy stated this issue has been under discussion for some time. It may have appeared to be quickly written, but it is based on discussions that have been ongoing. It is not a last minute addition to this subdivision. It is important for the County to do what needs to be done. Regarding Mr. Kaufman's comment about fees paid for review, he asserted that the fees paid to consultants are substantially more than the fees paid to the County. The County is placed in the position of exposing all of the citizen's pocketbooks at some liability for the benefit of a development proposal. That is a legitimate concern that needs to be dealt with. Commissioner Evans is proper to propose it. Whether it is included today is a matter of passing the scrutiny of the Board.

Commissioner Evans stated that she has often said if the Board is going to change the rules, there should be a process to follow without suddenly imposing the change at the last minute for a particular subdivision. If this was a 100 lot subdivision she would be more inclined to postpone the decision to deal with this issue. She did not want another Mullan Trail lawsuit. She was trying to prevent that from happening in the future. She withdrew her suggestion that this language should be included with this subdivision. She asked the Board to see to it that this issue is dealt with as quickly as possible and that standard language be written to put in the conditions of all subdivisions. The County relies on the professionals to present the information on which they base their decision on a subdivision. If the percolation tests are done in a specific site and someone puts a drainfield in a site that was not percolation tested and then comes to the County and ask why it let them build there, she did not want to be in the position of being blamed and having to pay for something that was not the County's fault.

Michael Sehestedt stated that was a classic example. He did not know whose fault it was. Lots are approved, building sites, well sites, sites for the drainfield are specifically identified, then the lot owner builds his house in the middle of the drainfield site and puts the well in the center of the other drainfield site and then hobbles in a septic approval because his house and well are sitting in his drainfield sites. The County winds up with drainfield failure or a neighbor can't build. Those are difficult control and enforcement issues. The citizen that comes up short will then ask the County why they let that happen.

Commissioner Evans wanted to make it clear she was not referring to the consultant who comes before the Board and says these are the facts and here is what is needed to make a decision. It is not the consultant who goes out and digs the hole. It is the individual homeowner. But the County is the one who ends up on the short end and she is trying to prevent that.

Michael Sehestedt stated that was what this whole discussion is about. It is not necessarily there are sinners among the consultants, it is that sometimes things break down in transition and a problem results. The County would like to do everything it can to make sure the problem stays where the mistake is made, rather than come home to all the taxpayers.

Commissioner Carey stated Commissioner Evans raised a very important matter. It was apparent more time was needed to think the process through. He was glad she withdrew her suggestion for action at today's meeting.

Brian Miller stated his drainfield was exactly where he was told to build it according to the percolation tests. The well was exactly where it was supposed to be. Nick Kaufman and Peter Nielsen and others can find nothing wrong with any location except that the drainfield doesn't work. The Commissioners are trying to come up with language to protect themselves and he understood that. There are hundreds of houses out in the area that have problems. His home is basically unsaleable. Some kind of sewage system is needed in the area to accommodate everyone.

Commissioner Evans stated the Board is working toward getting the sewer out there.

Chair Kennedy stated they recognize this is a major problem and they are attempting to deal with it. Even the Department of Environmental Quality recognizes it is a problem as they have changed the way it is approached. Mr. Lemm mentioned how the determination has changed from a composite of three test holes to the worst of the three test holes. They recognize there is a problem and a reaction is beginning to develop. In areas where there is so much land, the Board will leave the determination to the Health Department.

Chair Kennedy stated there was a motion on the floor to approve this subdivision subject to the conditions and amended Condition 5. Commissioner Evans' suggestion for indemnity language had been withdrawn. The motion had been seconded. He called the question. The motion carried on a vote of 3-0.

Sweet Water Hills Subdivision Conditions of Approval:

1. A zoning variance from the minimum lot width standard of the C-RR1 and Kona Ranch East zoning districts shall be approved prior to plat filing. *Subdivision Regulations Article 3-1(1)(B).*
2. The plat shall show slopes greater than 25% as no-build areas. *Subdivision Regulations Article 3-1(2) and staff recommendation.*
3. The following statement shall appear on the face of the plat and in each instrument of conveyance:

"Acceptance of a deed for a lot within this subdivision shall constitutes a waiver of the right to protest a future RSID/SID for improvements to Cote Lane, Haven Heights Road, and Lazy H Trail, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land." *Subdivision Regulations Article 3-2 and County Surveyor recommendation.*

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

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for inclusion in a maintenance district for roads, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land." *Subdivision Regulations Article 3-2.*

5. The applicant shall amend the covenants, subject to County Attorney Office and OPG approval prior to plat filing, to require that:
 - a. Driveways in excess of 150 feet in length shall have approved turnaround for fire apparatus, an all weather surface width of not less than 20 feet and an unobstructed vertical clearance of 13 feet 6 inches. All offsite portions of driveways shall be paved. Driveways shall also be paved at least 20 feet back from the outside boundary of the road right-of-way. The all weather surface and unobstructed clearance shall be maintained by individual lot owners that use the driveway. Maintenance shall include dust abatement. Driveway design, location, grade, surface type, and turnaround or turnout locations shall be approved by the Missoula Rural Fire District prior to any construction and building permit issuance. The driveways shall run generally parallel to drainages.
 - b. A maintenance agreement for shared portions of private driveways shall provide for snow removal, grading, drainage, and maintenance of the all weather surface and unobstructed clearance. Maintenance shall also include dust abatement.
 - c. Grading, drainage, and erosion control plans for site development shall be approved by the County Surveyor prior to issuance of building permits for the lots.

- d. Covenants related to driveways are enforceable by Missoula County by any action required to compel performance, including injunction, suit for damages or by refusal to provide fire protection and emergency service, until driveways are brought to these standards.
- e. Each lot owner shall properly control noxious weeds on the property and shall follow the requirements of the Revegetation Plan for Disturbed Sites.

Subdivision Regulations Article 3-1(1)(B), 3-2(6), 3-2(1)(I)(5), 3-4(2) and staff, County Surveyor, and County Attorney Office recommendation.

- 6. Grading, drainage, and erosion control plans shall be approved by the County Surveyor prior to plat filing. *Subdivision Regulations Article 3-4(2) and County Surveyor recommendation.*
- 7. The developer shall contribute \$100.00 per new lot to the Missoula Rural Fire District prior to plat filing. *Subdivision Regulations Article 3-7 and Missoula Rural Fire District recommendation.*
- 8. The following statement shall appear on the face of the final plat:

"Acceptance of a deed for a lot within this subdivision constitutes a waiver of the right to protest a future RSID/SID for public sewer and water systems, based on benefit. The lot owner shall connect to public sewer within 180 days of when the public sewer main is available to the subdivision. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land." *Subdivision Regulations Articles 3-1(1)(D), 3-7(2) and staff recommendation.*

- 9. A Revegetation Plan for Disturbed Sites shall be approved by the Missoula County Weed Board prior to plat filing. *Subdivision Regulations Article 3-1(1)(B).*
- 10. The plat shall include the following statement:

"The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under and across each area designated on this plat as "Utility Easement" to have and to hold forever." *Subdivision Regulations Article 3-5(2).*

Hearing: Invermere Subdivision (111 lots) – Miller Creek

David Loomis, Office of Planning and Grants, presented the staff report.

This project is 111 lots located on approximately 56 acres, generally about 1/4 acre to 1/2 acre in size per lot. It also includes a 3.6 acre graded park site and additional common areas. There will be new roads connecting this subdivision to Meriwether Street, which is the access to most of the subdivision, specifically Phases II and III, from Upper Miller Creek Road. Its access is from the Meriwether Addition which is an existing subdivision, uphill and to the south of this project.

The zoning is C-RR2 (Residential) with a maximum residential density of two dwelling units per acre. This does not contain a minimum lot size, but is calculated on gross acreage. Therefore, the approximate 56 acres would yield up to a maximum of 112 lots. When the park sites and unbuildable areas over 25% slope are removed, there is less net acreage, but the yield could be up to 112 lots. This is consistent with existing zoning. The Comprehensive Plans that cover this area include the 1998 Urban Update and very specifically, the 1997 Miller Creek Plan. The Land Use Plan called for three actual land uses for this site, the west half contemplated residential development up to two dwelling units per acre. The central 1/4 of the property anticipated a potential neighborhood park. On the eastern 1/4 of the property, closest to Miller Creek Road, it looked for a mixed use commercial development. The difference between the land use plan and zoning is the potential for a mixed use commercial. In this particular case, the developer has chosen to follow the residential zoning district, which covers the entire site, and not exercise his option of asking for a zone change for the commercial use along Miller Creek Road.

There are five key issues that have been identified. Number 1 is the location and usability of the central park site, called Invermere Park. Number 2 is the potential drainage and erosion impacts from this site. There is documented evidence from the entire Upper Linda Vista area of drainage and erosion problems. Number 3 is the roads being proposed. Number 4 is the road and pedestrian connections on and off site. Number 5 is the potential annexation by the City of Missoula.

Some of this particular site was once a gravel pit. Also, additional materials were dumped on site at one time. The Health Department stopped that practice and cleaned up the site. Part of the site has been disturbed and has piles of leftover gravel. The westerly portion where it slopes steeply down to Linda Vista is mostly in its natural state and has not been disturbed. There was one report of a potential hazardous material that OPG, the City-County Health Department and the State have looked into for the potential contamination of the site. The responses are attached to the staff report. There has been considerable correspondence on this issue.

Miller Creek Road is the primary access to Phase II and Phase III. Phase I, which is topographically separate, has access off DJ Drive which connects to the Linda Vista road system. There is a completely different transportation system in that Phase. Miller Creek Road has a fairly high volume of traffic and the Board is aware of the issues at the Wye. They have already addressed and answered the question about improvements to the Wye. Improvements to Miller Creek Road from Mockingbird Lane all the way up to and including the new access road into Miller Creek Views, Lloyd Twite's subdivision at the top of the hill beyond and south of this subdivision, are subject to decisions by the Board at the time of Miller Creek Views Phase III being filed. The road will be improved to a 36 foot roadway width, from its existing 24 foot width. The improved road will include a sidewalk on the east side and bicycle lanes.

Invermere will be responsible for providing sidewalk and curb and gutter on the west side of Miller Creek Road for its frontage only.

The staff analysis and staff report is based on the May 1999 submittal. The developer has since revised the plat in response to discussions with staff, the Parks Department and others about the location of Invermere Park, making it easily accessible and not surrounded by lots. A few of the conditions are directed toward the original submittal in response to those concerns.

Two letters were received today; one from Dennis and Wanda Russell, 2762 Meriwether and one from Tom Butler, 2754 Meriwether. An issue raised had to do with the size of the proposed building lots. Those lots are consistent with the existing zoning and no lots have slopes greater than 25%. Mr. Butler asked a question about increased traffic on Upper Miller Creek Road. This subdivision will generate $\pm 1,000$ new trips per day on Upper Miller Creek Road. It has already been determined by the Board that Upper Miller Creek Road improvements will be initiated at the filing of Phase III of Miller Creek Views. There is capacity on Miller Creek Road right now. The capacity issue that the Board has already dealt with is at the Wye of Upper and Lower Miller Creek Road. This project does not address pedestrian walkways or speed on Upper Miller Creek Road. Miller Creek Views addresses those concerns.

The Russell's asked about the park area on the slopes. The applicants have proposed two different types of parks. The flat, graded, usable park is centrally located and called Invermere Park, which also doubles as part of the drainage system. There are also the steep gullies and slopes that are to be put aside as unbuildable areas, per the subdivision regulations. They have been designated as open space areas, not to be graded but they can be used. There is the potential for a trail connector system in the future. They are not meant to be active recreation like Invermere Park. That is consistent with the Subdivision Regulations.

The apparent asbestos contamination question by Mr. Butler has been answered by the attachments to the staff report.

The Planning Board recommended 6-0 to approve all the variances and the subdivision with a revision to Condition 22 only.

Condition 4 deals with what to do if there is hazardous waste uncovered during grading on the site, as recommended by the Health Department. The information about the site is that there is little or no potential for hazardous waste, but the condition is included just in case. Condition 5 is an indemnification and hold harmless clause to the County for the hazardous waste issue only.

Condition 6 deals with a phasing plan for the subdivision. The question has been raised as to what phase should include dedication of Invermere Park. Right now, about 2/3 of the park will be dedicated in Phase II and 1/3 in Phase III. If all the grading and drainage is to be done at the same time, then perhaps all the park should be dedicated at the same time. The condition addresses the need for a revised phasing plan in more detail. It doesn't make a judgment of when or how the park be dedicated.

Condition 7 deals with increased traffic on Upper Miller Creek Road down to the Wye. Pursuant to discussions by the Board, there is a transportation improvement fund already established for subdivisions in the area to contribute to future improvements in the area. The category is very broad and deals with more than Miller Creek Road. The fee, being consistent with other subdivisions, is \$1,800 per lot.

Condition 8 is a wavier of the right to protest a future RSID/SID for improvements to Miller Creek Road and/or Linda Vista Boulevard, and maintenance of fire hydrants, based on benefit.

Condition 9 has been agreed to by the applicant and is significant. One of the key connector internal streets, Marias Street, which is a north/south street within the subdivision, will connect at the south end to the Meriwether Addition. The developer will do those off site improvements which were not done by the previous developer. An easement exists for it, the developer will come across the property line and connect Marias Street to the south into the existing subdivision. In addition, the developer will stub out the street to the property line on the north side, which will allow the extension of Marias Street to another subdivision which will be submitted soon.

Condition 12 speaks to drainage, grading and erosion control plans. There may be further discussions on this topic but so far involves the use of sumps in the streets (for 5 year storms) and the use of Invermere Park for overflow for higher runoff (100 year storms). There is a method to take the excess water, both to the park and from the cul-de-sac bulbs, downhill in an underground pipe to the base of the hills to larger holding tanks. Water from those tanks can then be released off site at a flow consistent with existing flows. Subdivision rules require that water can be released off site but it should be to the rates and peak flows of the existing flows.

Condition 18 talks about the redesign of Invermere Park. The developer has done that and the plat before the Board today reflects the new location of Invermere Park, making it more public. It is not rimmed on three sides by houses now, only one. It is more accessible, not just to residents of this subdivision, but to residents of Meriwether and other subdivisions. It is not a private park, it is intended to be a public park. The City Parks Department had a concern about Bundy Lane. Bundy Lane is an east/west internal connector, east of Invermere Park. It originally came closer to the park with only one row of lots between its end and the park. With the redesign, it now ends further from the park and there are three rows of lots in-between. Taking a pedestrian access through those three rows of lots would be difficult without losing lots. The developers are proposing to not have a pedestrian access at the end of Bundy Lane, from Marias through to Invermere Park. The question was raised by the City of what happened to that pedestrian access. Access for people within the subdivision has been vastly improved by having lots on one side only, with three sides open to the public, that has compensated for the loss of the pedestrian access. People in the subdivision would walk to Carla Jo or Drake Lane from Bundy Lane to access Invermere Park. Staff felt that was a good trade off.

Chair Kennedy stated David Loomis was saying there was no access from Bundy Lane at all.

David Loomis stated that was correct. It is a drainage easement but not a pedestrian easement. Staff felt the benefit of making the park more accessible to all residents on three sides outweighed the usefulness of having a pedestrian easement through those lots, from Marias to Invermere Park. It was called to attention by the City Parks Department and he told them he would bring it to the Commissioners attention. At the request of Chair Kennedy, he traced the public access to Invermere Park using Carla Jo or Drake Lane.

Chair Kennedy stated if there was already a drainage easement between those lots, and the potential for a pedestrian easement, he did not understand the comment about the impact to those three lots.

David Loomis stated it would give physical access but the easement is only 20 foot maximum, 10 feet from each lot. That would create a fenced-off area for a few internal residents. If there were no alternative, that would be the most feasible. However, there are other feasible alternatives that are not unreasonable and are superior to a narrow, fenced pedestrian easement.

Commissioner Evans stated she has lived in another area where there was a similar small fenced-off walkway between lots and it was not maintained. It was a no-man's land that nobody took care of. She would rather see the boulevard sidewalks than a drainage easement that becomes an eye-sore. She was not suggesting removing the drainage easement, but she is neither suggesting that it should be a walkway for the public.

Commissioner Carey asked if the drainage easement would be physically separated from the other lots?

David Loomis stated it is a drainage easement with either a drainage ditch or an underground pipe. If this is made a pedestrian easement, lot owners would install fences for sure. They may install fences anyway, but it would be at their discretion.

Condition 22 was modified by the Planning Board. It originally outlined a parks plan and was modified to strictly a weed management plan strictly for the open space area.

Condition 24 states there will be boulevard landscaping and street trees along Miller Creek Road and the covenants will establish ownership and maintenance of those. They will, in effect, be backyards of lots on Miller Creek Road. It will create a streetscape along Miller Creek Road.

Commissioner Evans asked if there was any discussion about this being a homeowners park or a dedicated County park?

David Loomis stated the applicant has all along intended this to be a public park.

Commissioner Evans stated her concern, given the budget this year, was there may not be money to maintain parks at all. She did not want to receive these large park areas with the expectation the County would maintain them and have it become a weed patch. She understood a homeowners park was for residents only and a County park was for everyone. She did not want to receive a park the County could not maintain.

Chair Kennedy stated the County did not want the steep areas set aside that are really not usable. He did not see any representation that Invermere Park falls within the County Park Plan. As it does not, it would be hard for him to accept the park on behalf of the citizens of Missoula County, which is really a drainage easement, for general public use.

David Loomis stated the Missoula County Parks Plan calls for an active-recreation and nature-based park in the South Valleys area, preferably in the area near Linda Vista and Lower Miller Creek Road as noted under Parks and Recreation Finding of Fact #8. Staff felt the Parks Plan looked in general at this area and the Miller Creek Comprehensive Plan looked very specifically at this site for a neighborhood park.

Chair Kennedy stated he appreciated that comment but did not see how this fits in to the overall plan. Does this park meet the suggested size and location requirements of the overall park plan?

David Loomis stated the park plan does not specify size, but the general rule on neighborhood parks is 2 to 20 acres and provides a number of different uses and structures. The 3.6 acre park size, not counting the steep areas, would fit that need. Staff understood that Invermere Park and the steep areas were totally different uses, but that fit within the idea of a "nature-based" park and an active recreation park.

Commissioner Evans stated she did not have a problem with the park, she had a problem with the County having enough money to maintain it. Were parks included in any of the RSID waivers? Some of the parks in Linda Vista are currently maintained through an SID. That would at least provide for some care and maintenance of the park.

Chair Kennedy stated that would be the least that could be done. He still thought that even though this park was in a general location for a community park, he did not see the analysis that said this particular location and this particular size was something that suited the needs of the overall community park system. He would support a condition to waive the right to protest an RSID/SID for park maintenance.

Dick Ainsworth, Professional Consultants Incorporated, developer's representative, was present, as was Drake Lemm, the developer. He thanked the staff for their assistance with this project. The property is 56 acres, a sort of undeveloped "island" surrounding by development. Meriwether and Southpointe subdivisions lie to the south, Ravenwood Hills is to the east across Miller Creek Road. The area to the north was originally platted as Massey-McCullough Acres consisting of large parcels, many of which were further divided. Linda Vista lies to the west. The property is zoned C-RR1 and the meets zoning density even though some neighbors have questioned that. The subdivision also complies with the 1997 Miller Creek Comprehensive Plan, which did propose a park in this general vicinity. The only part of the 1997 Miller Creek Comp Plan that this does not comply with is some mixed commercial/residential uses along Miller Creek Road on the easterly part of the property. The property is not zoned to

permit those uses now and the developer decided not to request a rezoning of the property. A small commercial area was recently approved in Miller Creek Views Addition to the south of this property. The 111 single family lots are in general smaller than lots in surrounding subdivision lots. Many of the adjacent subdivisions were developed prior to having sewer available, although sewer is now available in Linda Vista and Southpointe. Many of the lots were sized because they did not have sewer available. The City has tentatively agreed to extending City sewer to serve this development. It will also be served by an extension of Mountain Water. It would be a contract sewer system until such time as the City annexes this area. The developer, in view of the Miller Creek Comp Plan, had always intended Invermere Park be public. The primary reason the park is located at the westerly edge of the property, some of which is on a steep hillside, is because it is an extension of Meriwether Park and another park dedicated by Linda Vista. The thought was to connect Invermere with these other two public parks. The developer is not hung up on this being a public park. Parks are a problem, everyone wants them but no one wants to pay for them. The law requires that land be set aside for parks but makes no provision for developing them. The City and County are both short of funds to maintain parks. The site grading, seeding and basic irrigation of Invermere Park will be done. There will be no improvements to the other park areas. All of the site grading of Invermere Park will be done with Phase II. It is possible that all the seeding and irrigation would be done as well at that time, but at least the southerly two-thirds would be done at that time. The streets will all be paved to County standards and will have boulevard sidewalks, curbs and gutters and a requirement in the covenants that street trees be planted as owners build on their lots. If the developer plants trees before there are homeowners, there is no one to water and maintain the trees. Primary access will be from Meriwether. When the street was platted, it was clear it was intended to serve properties north of Meriwether as well. Connections of Meriwether to the north and south are intended. Meriwether has been platted but not constructed to connect to the south end of this development. The developer will build that short stretch of Meriwether, as well as the stretch to the north end to connect to a future development. Due to topography, there are two fairly lengthy cul-de-sacs that variances have been requested on. There is no physical way to connect those two roads, nor physical or logical ways to connect them down into Linda Vista. The bulk of the traffic will go out to Miller Creek Road, with the exception of Phase I off DJ Drive that will serve 5 lots in the southwesterly corner. The plat presented today is the revised plat. In response to concerns from OPG and City Parks Department, design studies were conducted to address those concerns. This revised plan seemed to satisfy most, if not all, of those concerns. The park stayed the same size but moved to the west. That worked better with the drainage system and made it easier to connect with parks on the west side of the property. The revised plan addresses several of the conditions that are in the staff report. The staff report was written based on the original submittal. Planning Board's recommendation was also based on the original submittal, even though this revised plan was available at that hearing. The concerns voiced about hazardous waste on the site have been addressed. Drainage is a concern to everyone in the South Hills. Property to the west in Linda Vista has had flooding problems in recent years. The flooding did not come from this property but the water did run across this property. A substantial effort is being made to resolve those "upstream" problems by DJ&A, including Linda Vista and Southpointe. They are proposing and installing several structures. One in particular, located in Meriwether Park, is an infiltration field designed to take the brunt of the runoff that comes through that park and has, in the past, runoff to the neighbors to the west. The drainage design for this property is to handle all of the on site drainage with a series of sumps or catch basins in the streets. Excess runoff would be routed into Invermere Park, which will be a fairly shallow basin but would serve as a retention area for storm water. An infiltration field similar to the one in Meriwether Park will be installed as well. Ultimately, two retention basins or tanks will be installed where the two drainages hit the west property line. Those would be designed to handle any overflow and to release it in a quantity less than pre-development flows.

Commissioner Evans asked Mr. Ainsworth to point out the relationship of this drainage to Timothy Court in Linda Vista.

Dick Ainsworth stated Timothy Court is west of this property. There will be a retention basin at the end of both drainages from the property. There are a series of drainage easements platted in Linda Vista. He was not sure of the design, probably some sort of swale. Perhaps a pipe would be needed to handle the drainage that goes downstream.

Commissioner Evans stated that Lloyd Twite was willing to pay for the piping on Timothy Court.

Dick Ainsworth stated that was in the plan. Drainage has been designed so that flows off the property would be less than pre-development. Chair Kennedy had asked about volume. That had not been calculated so they went back and made those calculations. Both the flow and volume that leave this property, after the system is in place, will be less than they presently are. They have no control over the flows that come down through Meriwether Park from upstream. His understanding was that what DJ&A was doing in Meriwether Park and upstream will resolve those flooding problems.

Chair Kennedy stated Commissioner Evans secured some commitment from Lloyd Twite. His understanding was there would be a settling basin on this property with a release of drainage into a pipe through the land on Timothy Court. Was that correct?

Dick Ainsworth stated that was correct.

Chair Kennedy asked if that would be the same on the southerly drainage as well?

Tom Hanson, Professional Consultants Incorporated, stated the southerly basin is a retention basin. The DJ Drive extension would be dry well sumps that would be adequate to take a 10 year flow. Flows greater than that would be accepted by a retention basin sized to accept everything up to a 100 year flow. There would be no discharge from this basin.

Chair Kennedy stated the only discharge off the property would be toward Timothy Lane and those would be at flows and intensities less than pre-development for a 100 year flood.

Tom Hanson stated that was correct.

Commissioner Evans stated the need for drainage and erosion control during construction was discussed. She wanted to make sure that was addressed.

Dick Ainsworth stated there was a condition to that effect.

Commissioner Evans wanted to make sure the wording clearly states that during construction, drainage and erosion control is taken care of.

Horace Brown stated he would like to add that that would apply to a builder that may not be part of the developers. That is where most of the problem occurs. The developer will sell the lot and there is no way to make the builder meet the requirements.

Chair Kennedy asked if the plan was to sell lots to builders.

Dick Ainsworth stated Mr. Lemm is a builder and intends to build on a substantial number of lots, but not all of them. He would sell some of them to other builders.

Chair Kennedy asked if Horace Brown's suggestion created a problem for anybody.

Dick Ainsworth stated he did not think so, other than the developer's ability to enforce the requirement.

Commissioner Evans stated this shows her that even if someone who purchases from Mr. Lemm and builds on the lot does not conform to this requirement, it clearly delineates who is responsible. She wanted the responsibility on the person doing the construction, to keep their soil and water on their lot rather than it washing down to lots below.

Dick Ainsworth stated the problem was that the Board required it of the developer and the developer requires it of the builder, but then the builder doesn't do it.

Commissioner Evans stated that at least it gave the lot owner below some grounds to go after the builder above.

David Loomis stated a suggestion, somewhat out of the ordinary, would be to add some phrasing about prior to building permit issuance, a builder show some kind of drainage and erosion control plan to the Surveyor's Office.

Dick Ainsworth stated there is much stronger language in the new subdivision regulations adopted by the City and in the new regulations proposed, but not yet adopted, by the County. The City has also said there is not staff to do all these drainage reviews. Right now neither the City nor the County are well equipped to review these sorts of plans.

Commissioner Evans stated she mainly wanted the builder to be aware that he has that responsibility. If the builder does not live up to his responsibility, at least the person on whose land the erosion winds up has some latitude to go back to the builder, as it was clearly his responsibility.

Dick Ainsworth stated he agreed with that.

Horace Brown stated one of the main reasons he would like this included is there are a lot of problems with silt coming down from building lots during construction because builders don't use a silt fence or anything else. That silt plugs up the existing drainage system and necessitates cleaning.

Dick Ainsworth stated another concern was increased traffic on Miller Creek Road. There is no question this subdivision will put an increased burden on Miller Creek Road. The improvements that are sorely needed for Miller Creek Road are on the way. The improvements from Briggs Street to Mockingbird Lane, including the Wye, are going to happen next year. The stretch of Miller Creek Road from Mockingbird Lane up to and just past Linda Vista Boulevard are the responsibility of Lloyd Twite and his Miller Creek Views Addition. One of the conditions of approval was that he improve that stretch of road prior to filing Phase III. Mr. Twite has filed Phase I and it has sold out. The schedule for Phase II and Phase III are not know, however, if Phase I has sold out, Phase II will probably be done soon. This development is not required to do a lot to Miller Creek Road but put boulevard sidewalks and street trees along the frontage of this property. The balance of improvements are Mr. Twite's obligation. They have met with Mr. Twite and he confirmed that was his obligation and he did not expect this development to participate.

Chair Kennedy stated the letter from Mr. Butler talked about the problem of accessing Upper Miller Creek from Meriwether Street. Would the improvement intended on Meriwether alleviate the problems anticipated as a result of this subdivision?

Dick Ainsworth stated if he said improvements would be made to Meriwether, he misspoke. He was talking about Marias.

Chair Kennedy stated the developer would not be doing anything to Meriwether.

Dick Ainsworth stated some work on the intersection would be done where this subdivision begins, otherwise no work would be done.

Chair Kennedy asked if Mr. Ainsworth could address the question by Mr. Butler about the traffic concerns that already exist at Meriwether and Upper Miller Creek.

Dick Ainsworth stated he did not have an answer. As more development takes place, it could get worse. As the street gets improved as more development of any size comes into the area, those problem should begin to be alleviated.

Chair Kennedy stated this subdivision would exacerbate a problem that already exists, as it would exit at that point.

Dick Ainsworth stated there would be alternatives created with this subdivision.

Chair Kennedy asked Horace Brown about this congestion.

Horace Brown stated there would be other access once the other streets are connected.

David Loomis stated it was true there is no other way out now. He also pointed out other alternatives.

Dick Ainsworth stated there was another access at Southpointe Addition. This is not the only access. There is no exact date for improvements to Miller Creek Road from Mockingbird Lane to the top, as part of Miller Creek Views Addition. As Mr. Twite's development progresses, he will have to look at doing that. If his development does not go forward, then the additional houses that would add to the traffic would not be forthcoming. He next addressed the conditions of approval. Basically, the developer has either met or is in agreement with 19 of the 21 conditions. Due to a gap in the numbering sequence, there are really only 21 conditions. With the redesign of the plat, the developer has met conditions 4, 6, 10, 14, 17 and 18. Condition 4 covers hazardous waste. Condition 6 dealt with the plan for revising the plan for Invermere Park and the phasing plan. Condition 10 asked for some changes to easements which have been done. Condition 14 asked for some sewer easements which have been added. Rural Fire has been petitioned for annexation per Condition 17. Condition 18 addressed OPG and Park Department concerns with regard to Invermere Park. He felt the plan before the Commissioners addresses all those conditions. The had no problems with Conditions 1, 2, 5, 7, 9, 11, 12, 13, 15, 16, 22 as amended by the Planning Board, 24 and 25. That leaves 2 conditions to be discussed. Condition 3 deals with mitigation of post development road dust from additional hillside road sanding. Invermere is not a hillside development and he did not believe it would require any additional sanding. He did not feel that was an appropriate condition for this particular subdivision. Condition 8 deals with the waiver of protest for future improvements to Linda Vista Boulevard and Miller Creek Road. If the intent of that is for long range future improvements of Miller Creek Road, there is not problem. As discussed today, the short term improvements to Miller Creek Road from above this development down to Briggs Street have already been funded and required by other developers. He wanted to make sure the intent of Condition 8 was not to fund some of the immediate improvements but deals with future long range improvements.

Chair Kennedy stated that type of conditions was being added to all subdivisions. It is an operation and maintenance, replacement and repair provision as to use. He was correct that Miller Creek Views Addition is financially responsible without an SID to finance the improvement. This condition goes beyond that time when that improved road wears out or needs additional improvements.

Dick Ainsworth asked the Commissioners to grant Invermere preliminary approval subject to Conditions 1, 2, 5, 7, 8, 9, 11, 12, 13, 15, 16, 22 as amended, 24 and 25.

Chair Kennedy stated some discussion about Condition 3 was needed. He asked David Loomis about the condition and also noted this was the first the Commissioners knew of any problem with the condition.

David Loomis stated in conversations with Shannon Therriault, given that the roads were up to a 6% grade, it does qualify as hillside.

Dick Ainsworth stated there were only a couple very short stretches of 6% grade, everything else is flatter.

David Loomis stated the roads to the subdivision were hillside and the actual roads in the subdivision were also considered hillside for the reason stated. The Health Department has a very low threshold in terms of what is considered hillside.

Chair Kennedy stated the PM (particulate matter) tolerance had been reduced and it is a function of miles traveled. To the extent that the miles traveled increased, there will be additional PM generated as a result of this subdivision. This is more about the traffic than the steepness of the road. The fact that there will be sand on the road and more miles driven will generate the PM. This conditions states that problem needs to somehow get mitigated.

Commissioner Evans stated the condition specifically says road dust emissions from additional hillside road sanding. These roads will be dedicated to Missoula County. If they need sanding, the Surveyor's Office would handle that. Why is a plan needed that says to the Health Department the County will own the roads and if they need sanding, it will be done?

Chair Kennedy stated it was not the sanding that is at issue, it is the result of sanding that creates the problem.

Commissioner Evans stated that is what the condition specifically says.

Chair Kennedy stated the problem is after the sand is on the road, then that sand becomes an airborne PM that creates a health hazard that is directly proportional to the number of times cars drive over it. When traffic is added, the concern is added to as well. The Health Department is saying this needs to mitigated in some way. It seemed like a legitimate concern.

Commissioner Evans couldn't see what the Health Department expects the developer to provide. What were they asking? How can this be provided?

Chair Kennedy stated he believed the Health Department was saying there is an impact but they are not directing how the development interest mitigates the impact. They are saying it is there and needs to get mitigated.

Commissioner Evans asked what the developer is expected to provide? If Chair Kennedy did not know what they want, and she did not know what they want, how is the developer supposed to know what they want.

Chair Kennedy stated the easiest way would be to provide some mechanism to sweep the road, but there were other options.

Dick Ainsworth stated he felt the only roads that may have sand on them that these folks would drive over were off site. He doubted seriously if any of the streets in the subdivision would be sanded on any kind of a regular basis.

Chair Kennedy stated this subdivision will generate more traffic, it doesn't matter if it is on site or off site.

Dick Ainsworth asked if the developer should sweep Miller Creek Road?

Chair Kennedy stated that was a possibility.

Dick Ainsworth stated he was thinking more of the internal roads. He can't say there would never be any sand on these streets, but doubted if there would be much.

Commissioner Carey asked David Loomis if any outline was received from Shannon Therriault?

David Loomis stated he did not have a conversation with her on this subdivision. On previous subdivisions, it has been an open-ended question as to what mitigations would be acceptable. This condition was purposely left open to allow negotiations between the developer and the Health Department about acceptable mitigation. The Health Department, in the past, hasn't come in with specific requirements.

Michael Sehestedt presented an example. The Courthouse is in what the City referred to as a street flushing district. Basically, it involves washing or flushing the streets to reduce dust levels. Using the SID process to create some sort of street sweeping or street flushing district might be appropriate mitigation.

Chair Kennedy stated there was a lot of discussion on the Health Board and the Air Quality District and in Growth Management about whether or not that was available to the County. It might be available in the City, but not in the County.

Michael Sehestedt stated actually it is available, the County can create an SID for any of the purposes listed in the City statutes. It should be looked at to create a larger district, not just this subdivision, perhaps the entire Miller Creek area.

Commissioner Evans stated her problem was that planning staff did not know what this means, the attorney did not know what this means, none of the Commissioner know what it means, but they are expecting the developer to know what it means and expecting the air quality specialists make up a mitigation or accept whatever the developer makes up. She did not like regulations that are not clear and she asked that this condition be withdrawn until there was a clear picture of what was being talked about.

Chair Kennedy stated he remembered the very careful discussions of the Health Board about how to mitigate this problem. During the approval process of the Overall Transportation Plan, it was apparent the particulate budget was expected to be surpassed in 2008, unless mitigation measures that had to do with this kind of subdivision were taken into account. This is a "pay me now" or "pay me later" situation. This has to be addressed and the Health Department has asked for the condition. The means are not specified because there may be more than one way to mitigate the problem. It seems an important provision that should not be eliminated. It should be left to negotiations with the Health Department and the developer to see how it can get mitigated.

Michael Sehestedt stated he understood the condition was saying that as a result of this subdivision there would be "X" increase in PM. The developer needs to talk with the Health Department about a proposal that will result in a reduction. It lets the Health Department work with the developer. In some cases, petitioning for inclusion in the Transit District or other measures will be adequate. This condition says there is a problem and talks with the developer are necessary to find a way to resolve the problem.

Commissioner Carey stated he felt Mr. Ainsworth had a technical disagreement with Shannon Therriault over whether this was a hillside. Was that part of the problem?

Dick Ainsworth stated that technically, 6% is a hillside. They do not have final design grades on the streets. The preliminary plans show there are a couple of short stretches with 6% grade. But generally, he did not consider this a hillside development. He understands that Shannon Therriault is also talking about dust generated on Miller Creek Road, that is a hill, driving up to this development.

Chair Kennedy stated the concern is that in Miller Creek, sand is preferred to be used in the winter. People travel over it, it doesn't matter how steep the road is. If there is sand on it, it generates PM.

Commissioner Carey stated it was reasonable to leave the condition in.

Chair Kennedy opened the public hearing.

Janice Stell, 6290 Timothy Court, stated she is more concerned than ever, after hearing the proposals, of the drain field and subsequent sinking of the tank, the generosity of Mr. Twite to put piping to catch the overflow, except the piping would go through what she assumed was her private property.

Chair Kennedy asked if she lived on Timothy Court?

Janice Stell stated she did.

Commissioner Evans stated the pipe would not be put through her private property.

Janice Stell asked where it would be put.

Michael Sehestedt stated when she bought her property, there was a drainage easement.

Janice Stell stated there was not much room between her and her neighbor. She asked where the water went after the pipe hits the street?

Commissioner Evans stated Mr. Twite did not intend to empty onto the street. She understood him to say he would pay for the piping to take it to the drainage area.

Janice Stell asked where the drainage area was?

Commissioner Evans stated she did not have a map of the area and did not know.

Janice Stell stated the only drainage area, it comes down to the corner.

Chair Kennedy stated the Board wanted to hear Ms. Stell's concerns. After they have been heard, perhaps there would be a comment that would alleviate some of her concerns.

Janice Stell stated her primary concern was the drainage. Her lot and others had required retaining walls because the hillside was unstable. She has never had any drainage problem through the gully. She did not want it now and it could occur. And the disturbance of the soil, if they leave it natural, that would fine, it will be a knapweed park, which it is now. Another concern was the noxious weed drifting over to her property. It would also be a great sledding hill into people's private property. And the concern about people using her property to get to the sledding hill, people respecting other people's private property from one development to the other. Having most of the drainage from Invermere Park, the overflow, and the other areas, drain down the gully, through her place could create possible flooding. That would inundate one house from both sides. How can that tie into the drainage system in the Linda Vista area, which really does not exist. It is basically open and it would go through where a new sewer lift tank was sunk. That would flood Rainbow Park, the sledding hill into Linda Vista. There is nowhere for the water to go but downhill.

Judith B. Smith, 3585 Southpointe Drive, stated just recently the Southpointe Landowners Association was formed. At their meeting, there had been grave concern about the hazardous waste that was found on this property. Everyone has said it is okay and they don't need to worry about it, but that is not very comforting. She had been told that perhaps an answer to this might be to have the EPA do some boring and once and for all to know what is buried on the property. She felt that would be very important to do. It was not good to find hazardous waste after excavation begins. The people surrounding this area are very concerned about the possibility of hazardous waste. It seemed to her a logical conclusion would be to have the EPA do a site study. The other issue which has been raised is Miller Creek Road. They cannot understand how an 111 home development can be allowed when Miller Creek Road improvements would, at best, be completed in 2002, another 2-1/2 years, maybe. She asked what would happen if Mr. Twite went bankrupt and there is no one to fix the road. It is a safety factor and a very serious problem. To even begin to bring more density to this area without the improvement of the road seemed to be asking for problems the Commissioners don't want to have, such as lawsuits, etc. She felt it was premature to be approving this subdivision and hoped it would not be approved.

Tom Butler stated he had presented some letters to the Commissioners. Something that came to mind during the discussions about the parks on the west, Meriwether Subdivision has a park and nobody uses the park for recreational purposes. It is just a big field of knapweed right now. He wondered if the parks on the west end of Invermere would turn into the same thing. It seems like the County is not too concerned about the possible hazardous material on this property. This could be another lawsuit in the making. If this subdivision is approved, a disclaimer should be added.

Commissioner Evans stated there was such a disclaimer.

Tom Butler stated the proposal for mitigation of hazardous waste found during the construction phase for the workers building the roads and houses here was simplistic and nobody would pay any attention to it. Most construction workers have no formal training in identifying hazardous materials such as asbestos. Even the City, County and State environmental specialists could not identify it. They had to send it to a lab to get a chemical analysis. This material contained 65% chrysotile asbestos, which is on the hazardous waste material list for the Environmental Protection Agency. He felt this was something to seriously look at rather than just pass over.

Mary Jean Gilman stated she was present on behalf of the Missoula Parks and Recreation Department. She was responding to the plan submitted subsequent to the Planning Board plan, the one where the walkway was removed from the drainage easement that leads to the park. She had four issues she wanted to speak on that were not reflected in the conditions, or some alterations to the conditions could be made that might be acceptable to the developers and the Commissioners. The park dedication has a relationship to the impact of the development overall. It is not only for now, but for the quality of life that is going to be for the people who will live here 10 years from now and on into the future. The first point was parkland usability. She believed that the significance of drainage for this park corridor is greater than the actual park usage. Looking at what will be necessary to achieve the drainage for the development, the area of active recreation will be reduced some from what the area of Invermere Park shows right now. In other words, there will be some grading that will remove some of the flatter area for play. She asked that with Condition 12, the drainage, grading and erosion control plans to be reviewed by the City Engineer, add the Park Department to that so they can work with the developer on getting the most out of this parkland. The second request would be on the timing of the park dedication. They are requesting that the natural areas, the drainage portions west of Invermere Park and the small southern spot park that connects to Meriwether Park, be dedicated with Phase I and that all of Invermere Park be dedicated with Phase II. That makes sense from the standpoint of grading the site. That affects Condition 6. They would like to have it spelled out how the parks would be dedicated in Condition 6. The third area of interest is park development. She understands the concern, as does the City, about the ability to maintain these park areas. On the other hand, from the standpoint of the future value of it to the community and the value of it as a public access way

from the Miller Creek Road area to the parks that connect to it, there is value in considering it more as a public park than as a homeowners association park. They would recommend that it become public and that the developer, when he dedicates Invermere Park, grade and seed the entire park, subject to the Weed Board approval of the type of seeding he would do. This could be a drought hardy mix. This could also be subject to Condition 22 that talks about the treatment with IPM methods and/or herbicides to control the weeds and then reseeding it with some adaptive types of plants that can grow there with very minimal maintenance, until such time as the park would be developed with an irrigation system with regular turf that would be mowed on a regular basis and possibly trees. They would recommend that occur with Phase III. That would be equitable for the developer as well as for the people who live there, they can begin to use the graded area and then when more of the development occurs, the irrigation system, turf and trees could be installed. The seeding condition would apply to Condition 15 and the treatment with IPM methods would affect Invermere Park in Condition 22 as well as the rest of the areas that are supposed to be considered for that.

Chair Kennedy stated he did not see where the staging for the irrigation system on Phase III was listed in the conditions.

Mary Jean Gilman stated that could be correct, she had not had a chance to thoroughly review this. The fourth area, in the original discussion of the subdivision, they talked about Invermere Park being a focal point for the development. She agreed with what everyone said about improving access to the park a great deal. She did think it was not going to be quite the focal point they thought. Originally they were hoping there would be an opening that would be a lot width from the street on the east side accessing the park. She agreed with OPG that the value of that is lost. It is not really an issue to the Park Department anymore, it would agreeable to them to eliminate it, they would have no objection. Finally, pertaining to Condition 8 for SIDs, she recommended that parks be added to that so that in the future, for park maintenance purposes, the homeowners could be assessed.

Chair Kennedy asked Mary Jean if she was suggesting the part that is steep, other than Invermere Park itself, needs to be in the public domain?

Mary Jean Gilman stated her department feels that if this were annexed, they would prefer the park to be in the public domain.

Chair Kennedy asked if that was everything the developer had outlined in green, all the parks, the total of 8.2 acres? The City is comfortable with the fact that there will have to be some way to operate and maintain the parks even though they are not really usable for any recreational purposes. They are there for open space and habitat.

Mary Jean Gilman stated the great value of this is people walking through the area. They have run into this in the Rattlesnake numerous times, where there are drainage easement that are used by people to walk. They were dedicated to the homeowners association at the time of the subdivision and that is difficult for the homeowners to deal with. They have been turning those easements over and making them public. They would like to start with it that way.

Chair Kennedy stated he heard she was in agreement with the staff that there is not a great deal of value using the drainage easement between Lots 65 and 64 to Invermere Park for pedestrian use. What will happen, if those people decided to fence that property on the edge of the easement, there will be a corridor there where nobody can go unless it is made an easement. He predicted that people will put up fences and others will use the easement to get to the park, creating a trespass situation, unless it is made a trail.

Mary Jean Gilman stated that had occurred to her but left that to the Commissioners discretion. The easements are to be clear of obstructions and even sometime when they are dedicated for public use, they still are obstructed. There is some usefulness in making it public, but they are willing not to have it.

Commissioner Evans stated when she lived on Cyprus Court and there was that sort of easement between lots, the neighbors did put up fences. That left a narrow traverse between two high fences. At night it was dark and nobody took care of it, it was a mess. She would prefer not to have that, she would rather have open sidewalks, boulevards that are cared for by the responsible party. She would rather not have narrow walkways between people lots that become a mess.

Mary Jean Gilman stated these 20 foot walkway easements are a concession to the need for public accessibility through areas. The Park Department's goal is to have them be broader than that so they are not right next to people's houses, but under current regulations, this is all they are able to do.

Chair Kennedy stated he was still concerned about the trespassing. If this becomes an easement, what is the width it needs to be for pedestrians?

Mary Jean Gilman stated the City Subdivision Regulations are 20 feet and that is what they usually ask for, unless it is very steep.

Chair Kennedy stated this was 20 feet.

Mary Jean Gilman stated another alternative would be to make that part of the park dedication. Then it is not an easement, the responsibility for maintenance is clear, it is public responsibility to maintain it. That would be an alternative.

Commissioner Evans stated the one on Cyprus Court was also public and it was not maintained. There were two such easements and one was vacated because of the mess.

Dick Ainsworth responded to some of the comments made. The question on the drainage easement was answered.

Chair Kennedy stated he was going to comment on that.

Dick Ainsworth told Ms. Stell that a pipe could not be put across their private property. He believed there was an easement there.

Janice Stell asked if people could walk through there?

Dick Ainsworth stated they could not. This points something else out. There is a drainage easement across these folks property. None of those lots are fenced. He felt it could not be assumed that just because there was a drainage easement, people would fence on both side of it. If a pipe is put through their property, it would have to be in the drainage easement and their yard would have to be restored. The hazardous waste issue was touched on again. This is beyond their expertise, but when it came to their attention, they contacted the Health Department. Tim Hall from OPG told them the Health Department had some problems there in years past. Ken Anderson was contacted and he sent all his information. He did not feel it was a problem, he had looked at the property and had the someone from the State Health Department look at it. They are comfortable there is no problem there and the developer relied on their expertise rather than their own. They did not feel there was a problem.

Commissioner Evans stated for the record that documents from the Health Department and Montana Department of Environmental Quality have been included with the application packet.

Dick Ainsworth stated he understood some of Mary Jean Gilman's comments. The grading of Invermere Park would probably be done all at once, whether or not it was dedicated to the public all at once or not. It only made sense to do the grading, particularly because it is part of the drainage facilities. They were proposing to dedicate a portion of the lower park, natural area with Phase I. They are proposing to dedicate the southerly two-thirds of Invermere Park with Phase II and the balance of Invermere Park with Phase III, as well as the balance of the natural park. Other than timing of dedication, there is a cost involved in giving that property to the City or homeowners association, because the developer has to give the property free and clear. It did not make sense to the developer to dedicate park well ahead of when that particular phase of the development is coming in. They felt the phasing plan proposed made sense, giving more than required by law. OPG reviewed the plan and they felt it made sense also. They would prefer to dedicate parkland as proposed in the revised phasing plan.

Chair Kennedy stated in terms of Invermere Park, since that is a combination park/drainage area, it seems that may trigger the dedication at a time when the drainage facility is needed. That might happen before the developer wants to dedicate it.

Dick Ainsworth stated the grading would be done with Phase II, the park falls partially in Phase II. If there is a drainage facility in it, it could dedicated or be an easement, it wouldn't necessarily need to be dedicated to provide for the drainage facility.

Chair Kennedy stated that anytime the developer was on that land, they will be affecting the drainage some way. That drainage has to go somewhere and most of it is going to Invermere Park. It seems like it needs to be graded at the outset of Phase II, whether or not it is dedicated, so it is functional for the purpose of the development.

Dick Ainsworth stated he said they intended to do the grading of the entire park at the outset of Phase II. They would wait on the dedication of the northerly portion of the park until Phase III.

Commissioner Evans stated the dedication was not as important as making sure the grading is done so there is a place for the water.

Dick Ainsworth stated it would only make sense to grade it all at once. He did not hear Mary Jean Gilman very well when she was talking about the seeding of Invermere Park.

Chair Kennedy stated there was a vegetation provision anyway, the developer can't just let the land lay.

Dick Ainsworth stated he understood that, disturbed areas were already included in the conditions. They had no problem with that. He was not sure what Mary Jean Gilman was requesting be changed relative to that.

Commissioner Evans asked Mary Jean Gilman if her comments had been run by Planning Department and taken into consideration before their recommendations were submitted?

David Loomis stated OPG had conversations with Mary Jean Gilman and agreed with most of her comments. There was a slight change due to the elimination of the access easement to the park. That had been discussed very specifically.

Chair Kennedy asked Mary Jean Gilman about the seeding?

Mary Jean Gilman stated that what she meant to suggest was that if the entire park was going to be graded at one time, and since there is a vegetation management requirement to manage the weeds, that it all be considered as a piece and that the weed management be done at the time of the grading, and that a hardy seed mix be used to revegetate the area for the time being until whenever it would be developed with irrigation.

Chair Kennedy stated he felt that was not inconsistent with what they are required to do.

Dick Ainsworth stated he had no problem with that.

Mary Jean Gilman stated the condition for the IPM, or the treatment of the weeds, does not right now apply to Invermere Park, as stated in Condition 22. That was the main point she wished to raise. The Planning Board excluded that.

Chair Kennedy stated that if Invermere Park were added back to Condition 22, it would satisfy her concern. He asked if that was agreeable to Commissioner Carey, Commissioner Evans and David Loomis?

They indicated it was acceptable.

Dick Ainsworth stated he had no problem with that. He did not comment about the narrow drainage easement that was at one time considered as an access to the park. They did not have a problem making that a public access easement. When it was first proposed, there was only one tier of lots. When it was applied to the revised plat, it went through three rows of lots. Mary Jean Gilman said she would like it wider, and asked that three lots be removed. That created a problem. She suggested the lots be put somewhere else but there are no other places to put the lots. When the choice was presented of removing three lots or removing the public access easement, it was logical to remove the access. The park is easily accessible with the boulevard sidewalks both ways. If the Board feels strongly that should be a public walkway easement, they did not have a problem with that. It will already be a drainage easement.

Drake Lemm stated OPG is doing a good job on taking into consideration the drainage problems. When building permits are issued on slopes, building plans have to go through engineering and zoning, which looks at setbacks and easements. If there was some stipulation on those lots that are bordering on slope area that there be a silt fence, that recommendation could be made before the building permit is issued. The City is also coming out with new regulations on lots of 5% grade or steeper. He would like to see the drainage easement from Bundy to the park left as a drainage easement. It could be shown on the plat for those six lots. There has been a lot of hearsay on the hazardous waste. Some of the information received tends to be suspect. He did not know how the asbestos got on the property. It would be very easy to plant asbestos on a site to try to stop a development.

Tom Butler stated he has lived in his subdivision since 1988. Back in the early 1990's, the contractor that was putting in the septic system in the Bellevue/Wapikiya area was bringing the waste material from those septic tanks and old asphalt and dumping it on this site. Nobody at the Health Department seemed too concerned about that. The residents of Meriwether were upset about it. A letter was sent to the governor who contacted the Health Department, who made the contractor remove what they had dumped. Prior to that, back in the early 1970's, American Asphalt had this property with a gravel pit and possibly a hot plant. He thinks the hazardous waste is a problem and should be looked into.

Commissioner Carey stated there was a letter from Ken Anderson dated June 2 that said no hazardous material was found on the property. Since then, apparently, there has been hazardous material found. Was Mr. Anderson aware of that?

Tom Butler stated he did not know that there has been material found since Ken Anderson looked at it.

Michael Sehestedt summarized what happened. Mr. Klein called in and claimed he had about 10 pounds of asbestos that he collected that had blow up against his fence. Ken Anderson was contacted and he walked the site. He found on the surface two small objects. He put them in ziploc bags. According to the letters, Mr. Anderson didn't find any signs of anything surfacing that had been buried. Mr. Podolinsky was called and came to the site. He walked the site and did not find anything, but he got a sample from Mr. Klein of what he had collected from his fence. That is what was analyzed. He suspected it was covert disposal. There is no apparent indication from Mr. Podolinsky's or Mr. Anderson's walk on the property that there was anything buried out there that is now surfacing. Based on Mr. Anderson's, Mr. Podolinsky's and Mr. Klein's testimony, there was some stuff placed on the surface fairly recently based on the testimony from those three men.

Chair Kennedy closed the public hearing. He stated there was a question asked of the developer's engineer about the amount of water that would be generated on the new development and how it might affect down stream uses. The Board was concerned because they had developed a policy that they did not want the volume or intensity of the water to increase, nor the quality of the water to decrease, as a result of a development. The developer's consultant did an analysis and reported to the Board today that as a result of this development, the overall flow downstream from the development will be less, there will be less water than there is currently, and the quality of water will not be diminished in any way. The result to those on Timothy Court should be less of a potential drainage problem on their property. Secondly, the drainage easement that exists predates this subdivision and it existed on the land prior to the time they bought the house. The drainage easement is recorded and it is there for the purposes of conveying water from upgrade above their house to below grade. There is a legal right to use that easement on a temporary basis for construction purposes, with a restoration requirement. His understanding is that drainage will be less, there will be an interruption of use on property they own during construction, but the land will be restored to its current use. Overall the flood potential to their property will be diminished. It is not the Board's job to devise a plan as a condition of approval to prevent access on everybody's property who might surround the subdivision. The Board can't prevent trespass by administrative fiat. They have a legitimate concern, people may trespass on private property, but he was not sure anything could be done to prevent it, except prosecute afterward. A comment was made that borings might be made to investigate where hazardous waste might be on the site. His experience is that boring will only reveal what is in the boring. The opportunity to collect hazardous waste through a boring on this site is remote. The opportunity to collect it would be when excavation occurs. They would not want to impose a condition for borings, it would be wasted money, and the results would not be satisfactory. Trespass still remains an issue for the access to Invermere Park along the drainage easement. Most public parks are surrounded by public areas. In this case, there is public area on only three sides, which is unusual. Because the easement exists, there is likely to be trespass. If a child using the easement were injured, the County would be involved in some legal action. He proposed to make it a pedestrian easement as well as a drainage easement. He liked Mary Jean Gilman's idea about making it a part of the park but did not know what to do about the part separated by Andrea Street. That seemed like a reasonable solution. It addresses Commissioner Evans' concern about it becoming a weed patch. If it is part of the park, then theoretically it will be maintained.

Commissioner Evans stated it did not take care of her concerns at all. It has a potential impact on six homeowners that does not need to be there. There is adequate access to that park without making that a pedestrian walkway, against the recommendation of the Planning Office.

Chair Kennedy stated if it could be preserved and no one would use it, he would have a hard time arguing the point. The fact that the easement is there, whether it is a pedestrian easement or not, is that it will be used.

Commissioner Evans stated the average citizen doesn't see an easement, it appear to be people's yards.

Commissioner Carey stated what has happened in the Rattlesnake should be taken into consideration. When people see an open space, they tend to head that way to a park. He felt that would be the reality in this area.

Chair Kennedy stated he had two concerns about the way the conditions are written. One has to do with traffic and the other has to do with drainage. Clearly, the drainage plan and the traffic plan have to meet the scrutiny of the approving agencies, including the County Surveyor. There is enough concern about the intersection of Meriwether and Miller Creek that there needs to be plan devised that satisfies a problem that may exist. It may require some investigation from the developer. That plan needs to be presented and reviewed by the Surveyor to see whether or not he agrees with the problem, and if there is agreement that a problem exists, then the Surveyor needs to agree with solutions that might be offered. He hoped the Board would agree to do that. It had been suggested the parks remain private, part of the subdivision. He was persuaded they ought to be public and there needs to be some method to operate and maintain them. He asked to consider a waiver of the right to protest a maintenance SID for the park. He felt it was important. Clearly, the City is not in any better financial shape than the County. This would provide some way to maintain that public facility. He did not see any objection to the addition of the Park Department to Condition 12 as a reviewer. He would like that added.

Commissioner Evans stated she had a problem with that. What makes the Board think they have the expertise to do the grading and drainage review?

Chair Kennedy stated one of the issues brought forward was that depending on how Invermere Park is graded for drainage, it could be done in such a way as to make much of the side slopes unusable, diminishing the overall usable play area. It is reasonable, since this is a park, for the Park Department to review that to see that it does satisfy the park requirement.

Horace Brown stated he had no problem with them making suggestions, but this is a County park, not a City park. If the County Park Board would like to look at it, that would be fine. The City can make suggestions which will be looked at.

Chair Kennedy stated that was fair under the circumstances. The area has not been annexed yet. He felt the import of their suggestions should be taken seriously.

Michael Sehestedt stated it needed to be real clear that whatever grading plan is developed, after listening to the Park Board, doesn't compromise the ultimate capability of this to address the drainage issues. Those can be balanced out, but it is real important to not do anything to aggravate the drainage problems down below. He wanted that in the record.

Chair Kennedy said that was well stated. This is a dual use facility and one function shouldn't be sacrificed for the benefit of the other. This is a dedicated park and needs to function as a park. If it can't get to the function of a drainage facility and a park, then it may require that the development offer some expanded area in order to accomplish that. He felt the issue of the seeding had been satisfied. If there is agreement with his comments, those things should be incorporated into the conditions where they apply.

David Loomis stated Condition 8 might be the appropriate place to put the phrase about parks maintenance and the RSID.

Commissioner Evans stated she had planned to put that as part of Condition 22.

David Loomis stated that would also be correct.

Chair Kennedy stated Commissioner Evans was correct, it should be under Parks.

David Loomis stated Condition 12 is regarding who get to approve and review the grading and drainage plans. It is currently written to ask for review by the City Engineer with approval by the Surveyor. He would be comfortable with adding Parks to the review agencies, but the Surveyor still has final approval.

Chair Kennedy stated the suggestion was to have it reviewed by the City and the City Parks Department and approved by the County.

David Loomis stated that would be his recommendation.

Commissioner Evans stated she would like to add to that input from Lloyd Twite, which is unusual, but the drainage is going to his drainage basin and he should be able to give some input to Horace Brown, especially as he has offered to pay for some of the piping.

Chair Kennedy stated he agreed with that but did not know it needed to be put in the condition, as the plan requires that anyway.

Horace Brown stated he would be happy to review that with Mr. Twite.

Commissioner Evans stated to make it a condition then.

Chair Kennedy stated that Ms. Smith asked what would happen if Mr. Twite was not able to perform. Was there a condition to require this developer to provide the improvements he is relying on Mr. Twite to provide. He asked counsel about that.

Michael Sehestedt stated there is a collection of \$1,800 per lot for mitigation of traffic impacts.

Chair Kennedy stated that was a different issue.

Michael Sehestedt stated he knew that was a different issue but was a safety net, for road and transportation issues in Miller Creek. Assuming Mr. Twite goes bankrupt and Phase II, III and everything else planned goes to the national land trust in a conservation easement and nothing will ever be built on it. That kills the current obligation to do the Miller Creek Road improvement from Mockingbird to Linda Vista Boulevard. Mr. Twite's obligation is absolute upon the filing of Phase III. If that happens, there will not be the Phase III traffic, traffic would be capped. Any successor of Mr. Twite's in the area would be bound by the same thing, so it is assumed that is gone forever. Then the total road needs would have to be looked at again. There would be the contribution from this subdivision of around \$200,000. The transportation plan may need to be rethought but there is some funding. There is much less traffic because Phase III and subsequent phases aren't happening. As other development occurs in the Miller Creek area, a road assessment is collected from them to pay for upgrading, maintenance, replacement of infrastructure. To the extent that exists, a fund and safety net is being developed. Beyond that, there does not appear to be anything that says if those development don't happen, then there is no immediate guarantee of Miller Creek Road improvements. Alternative sources would need to be looked at.

Horace Brown stated for the record that last year 10,000 ADT was surpassed and this year they are also over 10,000 ADT. It has been stated the road improvements will happen in the year 2000, but these need to happen if this type of development is to go on. He hasn't heard anything about any improvements being done. Last he heard, they were working on a plan, but nothing further.

Chair Kennedy stated there was a review comment that relies largely on Lloyd Twite's improvements on Miller Creek Road. However, he heard Horace Brown say they are already over the 10,000 ADT mark that triggers improvements, whether or not Lloyd Twite ever develops, this subdivision needs to consider improvements to that road. If that is the case, there needs to be a fall back position where this subdivision is responsible for doing some improvement to Miller Creek Road in the event that the improvement that Lloyd Twite is supposed to build doesn't get built.

Commissioner Evans stated that was what the \$1,800 is for.

Chair Kennedy stated that is not what it was for.

Michael Sehestedt stated clearly Phase I of this subdivision does not impact this issue, it drains into Miller Creek Road at the Wye, where improvements are underway. The possibility is to make final filing of subsequent phases contingent upon those road improvement happening. The question is one of timing.

Dick Ainsworth stated his understanding of the improvement Horace Brown was referring to are not subject to Lloyd Twite going bankrupt, are not subject to anything like that. There are improvement guarantees from someone to do those improvements, no matter what. That is the fall back position as told to him by Colleen Dowdall. He did not feel there was any chance those improvements would not happen.

Chair Kennedy stated the question has nothing to do with the Wye improvements that addresses most of what Horace Brown is talking about on the 10,000 ADT. The question is whether or not this subdivision, without Lloyd Twite's subdivision, would trigger additional improvements to Miller Creek Road from the Wye up the hill. He did not know the answer to that question.

Dick Ainsworth felt nobody knew the answer to that question.

Commissioner Evans stated it was theoretical anyway.

David Loomis stated one of the important things about the trigger of Phase III of Miller Creek Views was the threshold wasn't reached at least until Phase III was reached by Mr. Twite. That threshold on Upper Miller Creek Road has not been reached. The first phase was about 130-140 lots as is the second phase. This subdivision won't quite reach that either, all by itself, even if Mr. Twite didn't move ahead. Another important factor is although the threshold was reached on Phase III, basically the entire buildout, with little increments of improvements to Miller Creek Road, only then after the full build out, did the full effect of Miller Creek Road improvements from Mockingbird Lane up the hill become evident. Phase III, if separated, would only be responsible for a segment of improvements to Miller Creek Road. It was agreed by the developer that the whole road improvement would be done, not phase by phase, at the trigger of Phase III. The threshold hasn't been reached and improvements were intended to be done phase by phase. The developer agreed with the Board to do the whole thing at Phase III, even though the impact at full build out of Phase V or VI would finally get there. It would be hard to evaluate this impact, which is why there is the RSID and the \$1,800 per lot. That is basically the safety valve. If nobody ever developed those lots at the top of hill, this developer is contributing his share of the impact.

Horace Brown stated his concern is not with anything but the Wye. That's where the problems will start. He asked if it was known for sure that would be taken care of in 2000?

Chair Kennedy stated Mr. Twite has an obligation under the requirement of the grant to perform within that time, his time is running short. He is most likely reviewing the plan with the City as required. He did not know where Mr. Twite was in the process currently.

Commissioner Evans stated Mr. Twite was waiting to get some legal language agreed to by the three agencies involved, the County, Maloney Ranch attorneys and his attorneys, so they have the necessary paperwork to obtain easements.

Horace Brown stated his concern was that there would start to be more accidents at the Wye due to high volumes.

Commissioner Evans stated the construction should begin in the spring if all the paperwork is completed.

Chair Kennedy stated the ADT is over 10,000 at the Wye, and this subdivision will impact the Wye as well. It will generate an additional 777 to 800 trips per day.

Horace Brown stated the additional trips per day would be at buildout. There is some time before that is reached.

Commissioner Carey stated he did not think the potential of builders creating drainage problems had been addressed.

Commissioner Evans stated she had language to deal with that when she makes her motion.

Commissioner Evans moved that the Board of County Commissioners approve the variance request for right-of-way width of Andrea Lane to vary from a 60 foot right-of-way to a 54 foot right-of-way; approve the variance request for road pavement width on portions of Drake Lane, Carla Jo Lane, Andrea Lane, Bundy Lane and DJ Drive from a 32 foot width to a 30 foot width; approve the variance request for cul-de-sac length of Drake Lane from 600 feet long to 750 feet long; and approve the variance request for right-of-way width of Upper Miller Creek Road to vary from an 80 foot right-of-way to as narrow as a 70 foot right-of-way on some portions, and a variance for road pavement width of Upper Miller Creek Road from a 44 foot width to a 24 foot width, based on the findings of fact in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans asked David Loomis if he was satisfied that Conditions 4, 6, 10, 14, 17 and 18 have been met.

David Loomis stated there was no written documentation, but as far as he knew, verbally, they had been satisfied. That proof will be in the final plat filing.

Commissioner Evans moved that the Board of County Commissioners approve the Invermere Subdivision based on the findings of fact in the staff report and subject to the conditions in the staff report, excluding conditions 4, 6, 10, 14, 17 and 18, based on the developer's assurance they have already been met. The other conditions are 1, 2, 3, 5, 7, 8, 9, 11, 12, 13, 15, 16, 22, 24 and 25, with the following additions and amendments. On Condition 8 which has to do with waivers of right to protest, insert "drainage" after *Linda Vista Boulevard*. On Condition 12 which deals with drainage, insert "and City Park Department" after *City Engineer* and insert "(with input from Lloyd Twite)" after *final plat*. On Condition 13, add at the end of the condition "During construction drainage and erosion control shall be contained on site."

Dick Ainsworth felt that should be under Condition 12, not Condition 13.

Commissioner Evans agreed and removed that statement from Condition 13. On Condition 12, in the second paragraph, insert "including during construction" after *experience erosion*. On Condition 22, leave in "Invermere Park and" in the first paragraph; delete "(except for the active use Invermere Park)" under subsection "e"; and replace *appropriate parks agency* with "weed department" in the final paragraph. Also, add the waiver of the right to protest an RSID/SID for park maintenance.

Mary Jean Gilman wanted to clarify if Commissioner Evans wanted to include in Condition 8 an SID for park maintenance.

Commissioner Evans stated she just added that to Condition 22.

Mary Jean Gilman wanted to clarify on Condition 6 if any of the discussions agreed to verbally on the phasing plan were to be added to this condition.

Chair Kennedy stated in Commissioner Evans motion, Conditions 4, 6, 10, 17 and 18 were not included and he felt they really should be included.

Commissioner Evans stated that David Loomis and Dick Ainsworth said they were already met. She also said in her motion that it was conditioned upon those conditions being met.

Chair Kennedy stated it would be easier to include those conditions.

Commissioner Evans stated she did not care and those conditions could be left in.

Dick Ainsworth stated he was concerned to leave in all the conditions they have already been satisfied. It did not make any sense to him.

Chair Kennedy stated it might not make sense to him but they were conditions of approval and the Board did not know they were satisfied, other than a letter from Mr. Ainsworth that they had been satisfied.

Dick Ainsworth stated they were on the face of the plat. The easements are shown on the face of the plat, the plan has been redesigned. When they were at the Planning Board and he raised the question of whether they should be approving this plat or not, Colleen Dowdall said to not worry about it, when it came before the Commissioners, they can eliminate all of the conditions that are already satisfied. That is what he hoped could be done.

Chair Kennedy stated he did not see that. Condition 4, the plan for handling and disposal of solid or hazardous waste, is a condition.

Dick Ainsworth stated that was a written plan that David Loomis has, it was given to OPG about two or three weeks ago.

Chair Kennedy asked what the problem was with the conditions remaining? Why is there a problem if they stay there?

Dick Ainsworth stated the more conditions that there are on a plat, the more difficult it is when they reached the filing stage. David Loomis would agree with that. When there is a large laundry list of conditions, and this was met, and that was met, and this wasn't met, particularly 4 or 5 years down the road when staff has changed, it did not make any sense to include any conditions that aren't necessary at the time of approval.

Chair Kennedy stated Dick Ainsworth would have to go through the conditions and show why they are not required.

Dick Ainsworth stated David Loomis has the plan required under Condition 4.

Chair Kennedy asked David Loomis if that was correct?

David Loomis stated that was correct.

Dick Ainsworth stated Condition 6 says a revised plan to show the phasing for the proposed development. That is the plan on the wall showing Phase I, Phase II and Phase III. This is, in fact, the revised phasing plan.

Chair Kennedy stated that no adjustments to phasing can be made, this sheet shows the final phasing plan because there is no other way to change it.

Dick Ainsworth stated that was correct. Realistically, what happens when they plat this, if they came in with Phase II and said when they looked at the final design it made sense to include two more lots, or some minor adjustment, that is allowed by the subdivision regulations at final platting. That would be no different than if this were the original plan and the Board was approving it. That is the way the phasing shows and that's the way it would be approved. Condition 10 talked about widening the easement that went back to Lot 52 and putting a no access strip on both sides of it, this plat shows that. On Condition 14 some sewer easement had been left off the back of some lots which are now shown on this plat. They have submitted a petition to Missoula Rural Fire for annexation as required in Condition 17, and David Loomis has a copy of that petition in his file. Condition 18 dealt with the reasons to amend this plan and the park plan. He thought that had been discussed and all the points discussed under Condition 18 have been discussed today and addressed by this plan.

David Loomis added he agreed with Dick Ainsworth that he has fulfilled these conditions. In the second paragraph of Condition 18, it asked for, because there is a new road, written approval by the appropriate fire agency, the County Surveyor and OPG. He recommended that paragraph be left in.

Dick Ainsworth stated that was not a problem. Include the second paragraph of Condition 18.

David Loomis agreed.

Commissioner Evans agreed.

Commissioner Carey asked if the third paragraph needed discussion.

Dick Ainsworth stated the discussion about the drainage easement and if it should be a walkway easement and part of the park, if the Board felt it should be a public access easement, they did not have a problem with that. If it is made part of the park, the loss will be significant. This zoning has minimum lot widths of 100 feet. These lots are all 100 feet wide. By taking 10 feet off two of these lots, they will lose a lot in there.

Chair Kennedy stated that was a good point. There is something that hasn't been addressed.

Dick Ainsworth stated the utility easement.

Chair Kennedy asked if it was power or drainage?

Dick Ainsworth stated it was not drainage, it would be power and phone.

Chair Kennedy stated that would need to be addressed.

Dick Ainsworth stated they would probably have to come across part of a lot. This would be power and telephone access to these lots and that will have to be added to the plat.

Chair Kennedy stated to do that.

Dick Ainsworth stated the condition could read "A public utility easement running along the south sides of Lots 55 through 61 will need to be extended in an appropriate location to serve the lots to the west of it."

Commissioner Carey stated he would like to leave the third paragraph of Condition 18 in, not to make it a dedicated park, he did not want to see the developer lose a lot, but it would be helpful to have that clearly identified as public access.

Commissioner Evans stated they would leave in Paragraph 2 and Paragraph 3 of Condition 18. She felt that took care of all the conditions of her motion.

Michael Sehestedt stated one more advantage of leaving this a walkway easement is that if it doesn't work out, if it becomes a problem, it is vacatable. He was concerned about dedication, it would be much more difficult to deal with if it became a problem.

Chair Kennedy clarified that the motion included Condition 3.

Commissioner Carey stated yes it did. He then seconded the motion.

Chair Kennedy asked if Patty Rector could summarize the motion.

Patty Rector stated the conditions to be removed included Condition 4, Condition 6, Condition 10, Condition 14, Condition 17, and the first paragraph of Condition 18. The motion included all the amendments Commissioner Evans made and also included a new condition for the public utility easement for Lots 55-61 on the south side.

Chair Kennedy called the question. The motion carried on a vote of 3-0.

Commissioner Evans told Dick Ainsworth that she was working on a hold harmless clause for subdivisions. As he works with the Board quite frequently, she wanted him to know that action was being planned.

Dick Ainsworth stated he understood and would like to work with the Board on this issue.

Michael Sehestedt noted there were some hold harmless clauses that met his requirements, identifying a specific issue and dealing with it specifically. More could be done.

Invermere Subdivision Conditions of Approval: (Re-numbered sequentially)

Hillside and Areas of "No Build"

1. Areas of slope 25% or greater shall be shown on the face of the final plat as "No Build" areas. Prior to final plat approval, the covenants shall be amended to state that any slopes 25% or greater are designated on the plat as "No Build" areas which shall be kept open and free of buildings. *Subdivision Regulations Article 3-3(1)(B).*

Air Quality

2. The applicant shall develop a dust abatement plan and provide dust abatement for all roads adjacent to and within the Invermere subdivision during and through construction and paving of the roads. The dust abatement plan shall be approved by the Health Department prior to approval of the final plat. *Subdivision Regulations Article 3-1(1)(D) and Health Department recommendation.*
3. A plan for mitigation of post-development road dust emissions resulting from additional hillside road sanding shall be reviewed and approved by the Air Quality Division of the City/County Health Department prior to approval of the final plat. *Subdivision Regulations Article 3-1(1)(D) and Health Department recommendation.*

Public Health

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

"The subdivider shall indemnify and hold the County of Missoula harmless from any and all legal liability, claims or actions resulting from any illegally buried solid or hazardous waste on the subdivision. *Subdivision Regulations Article 3-1(1)(D) and Health Department recommendation.*

Roads and Transportation

5. The subdivider shall mitigate the traffic impacts generated by this subdivision on the Miller Creek transportation system in the amount of \$1,800 (One Thousand Eight Hundred Dollars) per lot to be paid to Missoula County, prior to filing the final plat. *Subdivision Regulations Article 4-12 and staff recommendation.*
6. The following statement shall appear on the face of the final plat:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for improvements to Miller Creek Road and Linda Vista Boulevard, drainage, and maintenance of fire hydrants, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land." *Subdivision Regulations Article 3-2 and County Surveyor recommendation.*
7. The subdivider shall construct the off-site portion of Marias Street from Meriwether Street to the southern edge of the property to match the Marias Street road section within the subdivision – a 32 foot paved roadway width, curbs, gutters and 5 foot boulevard sidewalk separated from the back of curb by seven feet (7'), subject to review and approval by the County Surveyor, prior to approval of the final plat. *Subdivision Regulations Article 3-2(10).*
8. The developer shall petition to be included in the Missoula Urban Transportation District prior to approval of the final plat. *Subdivision Regulations Article 3-2(1)(E) and Missoula Urban Transportation District recommendation.*

Drainage

9. Grading, drainage and erosion control plans shall be reviewed by the City Engineer and City Park Department and approved by the County Surveyor prior to approval of the final plat (with input from Lloyd Twite).

The erosion control plan shall address all areas that may experience erosion, including during construction, due to cut and fill, road, driveway and utility improvements, and home construction. The plan shall specify a strategy and timeline for implementation for these areas before, during and after site grading and construction.

The drainage plans shall include calculations for 5 and 100 year return frequency storms, a geotechnical analysis of soils that includes percolation rates relative to anticipated flows, and groundwater elevations. The subdivider shall provide engineering plans of site grading and drainage that will alleviate the potential hazard of improper drainage within the site and off the site, to be reviewed by the Building Division and approved by the County Surveyor prior to approval of the final plat. *Subdivision Regulations Article 3-1(2), 3-4, 4-1(12) and City Engineer recommendation.*

10. The final plat shall include a certification by the consulting engineer that the drainage design will effectively retain any additional drainage that results from the subdivision on site or release it in a manner that will not substantially increase the peak run-off normally present before the subdivision. *Subdivision Regulations 3-4 and staff recommendation.*

Weeds

11. A Revegetation Plan for disturbed sites shall be approved by the Missoula County Weed Board prior to approval of the final plat. The developer shall file a development agreement stating that weeds will be controlled on unsold lots. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*

Fire Services

12. Fire hydrants shall be installed or guaranteed prior to filing the plat for each phase of development. The locations shall be approved by the Missoula Rural Fire District or the appropriate fire agency prior to final plat approval. The homeowners association shall be responsible for fire hydrant maintenance either through assessments or the creation of an RSID/SID. The covenants shall be amended to reflect this provision. *Subdivision Regulations Article 3-7(1) and Missoula Rural Fire District recommendation.*

Parks, Boulevard and Landscaping

13. The width, location and parking provisions and restrictions for the trail/emergency access lane shall be approved by the appropriate fire agency, the County Surveyor and OPG. The surfacing of the trail/emergency access lane shall be approved by the County Surveyor and the Health Department. A 1-foot "No Access" strip shall be placed on the west side of this lane.

If a pedestrian access easement is provided extending from Bundy Lane to Invermere Park, it shall be designed for public access and shall be clearly identified as such, subject to review and approval by OPG.

14. The covenants shall be amended to include a Weed Management Plan for Invermere Park and the open space park on the west end of the property that addresses vegetation management, including weed control and/or landscaping. Prior to the dedication of Parks/Open Space, the areas to be dedicated will be treated for weed control by the integrated weed management technique.

The Weed Management Plan shall be reviewed and approved by the Weed Department and OPG, prior to final plat approval of Phase II.

The following statement shall appear on the face of the final plat:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for park maintenance, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land." *Subdivision Regulations Article 3-8 and staff recommendation.*

15. The subdivider shall install boulevard landscaping, including street trees placed every thirty feet (30'), along Miller Creek Road, subject to approval by OPG prior to final plat approval of Phase II. The covenants shall be amended to include a landscape scheme for the area along Miller Creek Road and require that the individual landowners maintain that area.

Covenants

16. The covenants shall be revised as required by the conditions of subdivision approval, and the covenants related to these revisions shall not be amended or deleted without governing body approval. The revised covenants shall be reviewed and approved by the Missoula County Attorney's Office and OPG staff prior to approval of the final plat. *Subdivision Regulations Article 5-1(5)(I).*
17. A public utility easement running along the south side of Lots 55 through 61 shall be extended in an appropriate location to serve the lots to the west of it.

There being no further business to come before the Board, the Commissioners were in recess at 5:05 p.m.

THURSDAY, AUGUST 5, 1999

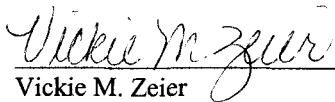
The Board of County Commissioners did not meet in regular session. Commissioners Evans and Kennedy were out of the office all day, and Commissioner Carey was out all afternoon.

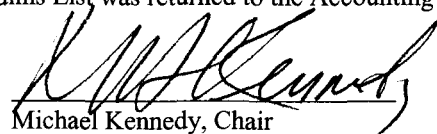
FRIDAY, AUGUST 6, 1999

The Board of County Commissioners did not meet in regular session. Commissioner Kennedy was out of the office all day; Commissioner Evans was in briefly in the forenoon for signatures, but was out the rest of the day.

Claims List -- Commissioners Carey and Evans signed the Claims List, dated August 5, 1999, batch number 74, with a grand total of \$5,694.04. The Claims List was returned to the Accounting Department.

Claims List -- Commissioners Carey and Evans signed the Claims List, dated August 5, 1999, batch numbers 51, 53, 66, 73, 75 and 78, with a grand total of \$566,782.61. The Claims List was returned to the Accounting Department.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, AUGUST 9, 1999

The Board of County Commissioners did not meet in regular session; Commissioner Carey was on vacation August 9-13, and Commissioners Evans and Kennedy were out of the office all day.

TUESDAY, AUGUST 10, 1999

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

Monthly Report – Chair Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen Orzech, for the month of July, 1999; and the Report of the Sheriff, Douglas Chase, for the month ending July 30, 1999.

Plat and Development Agreement – The Commissioners signed the plat and development agreement for Airport View Acres, a subdivision located in the NE1/4 of Section 35, T14N R20W, PMM, Missoula County, an area of 12.19 gross acres, with the owners of record being Robert M. and Dawn R. Braach.

ADMINISTRATIVE MEETING

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

Agreement – Chair Kennedy signed an Inmate Telephone System Agreement with Evercom Systems, Inc. for the inmate phone system in the new jail. Customer shall receive monthly payments equal to 38% of the actual gross revenue from the phones, plus a one-time signing bonus of \$40,000.00. Term of the Agreement is 5 years from the later of the date of execution or the date of installation of the equipment. The Agreement was returned to Mike O'Hara in the Sheriff's Department for further signature and handling.

Task Order – Chair Kennedy signed a Task Order with the Montana Department of Public Health and Human Services for provision of tuberculosis control and prevention programs. Performance shall begin July 1, 1999 through December 31, 2000. Maximum compensation shall be \$17,000.00. The Task Order was returned to the Health Department for further handling.

Task Order – Chair Kennedy signed a Task Order with the Montana Department of Public Health and Human Services for performance of public health-related services. Performance shall begin July 1, 1999 through June 30, 2000. Maximum compensation shall be \$164,044.00 for SFY 2000. The Task Order was returned to the Health Department for further handling.

Closing Documents – The Commissioners signed a Warranty Deed and Settlement Statement for sale of property at 300-306 West Broadway to HomeWORD, Inc. Total sale price is \$260,000.00. The documents were returned to First American Title Company.

Encroachment Permit – The Commissioners signed a Missoula County Encroachment Permit for Patrick and Danielle Dauenhauer to encroach along Cochise Drive adjacent to Lot 2, Forest View Summary Subdivision. The encroachment is limited to the existing sanitary sewer service line, and is effective for a period not to exceed 10 years, renewable at the option of Missoula County.

Shoreline Permit – The Commissioners approved and Chair Kennedy signed a Shoreline Permit for Gary Lewis of Deer Creek Excavating, on behalf of Mark VerWest, to place rip rap on the shoreline of Placid Lake at 455 Enchanted Forest Road. The permit was returned to Brian Maiorano in OPG for further handling.

Resolution – The Commissioners signed Resolution No. 99-052, a Resolution to rename Alice Avenue, as shown on Roseland Orchard Tracts No. 4, to Alice Lane.

Other items included:

- 1) The Commissioners approved a street name change in the Linda Vista area; renaming a portion of Scott Allen Drive as Christian Drive.

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

WEDNESDAY, AUGUST 11, 1999

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

Claims List -- Commissioners Kennedy and Evans signed the Claims List, dated August 10, 1999, batch numbers 80, 84, 86, 87, 88, and 91, with a grand total of \$199,708.63. They also signed a Claims List, dated August 10, 1999, batch number 90, with a grand total of \$31,180.18. The Claims Lists were returned to the Accounting Department.

Resolution -- The Commissioners signed Resolution No. 99-053, a Resolution to amend section 6.07, the Missoula Development Park Special Zoning District Regulations, to accommodate a mix of industry-related land uses and community service and support activities.

Telephone System Addendum -- Chair Kennedy signed an Addendum Sheet for the Inmate Telephone System Agreement with Evercom Systems, Inc. The Addendum states that Evercom, Inc. will handle all negotiations for telecommunications service on jail telephones. However, Missoula County may act on its own behalf when deemed necessary, and Evercom may not incur any obligation against Missoula County except for those set in the contract. The Addendum was returned to Jan Dietz in the Sheriff's Department for further handling.

Warranty Deed -- The Commissioners signed a CORRECTED Warranty Deed with HomeWORD, Inc. for purchase of the property at 300-306 West Broadway. The Deed was returned to First American Title Company for further handling.

PUBLIC MEETING – August 11, 1999

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioner Barbara Evans, County Surveyor Horace Brown, County Clerk & Recorder Vickie Zeier, Deputy County Attorney Colleen Dowdall and Chief Civil Attorney Michael Sehestedt. Commissioner Bill Carey was on vacation.

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$803,365.46. Chair Kennedy seconded the motion. The motion carried on a vote of 2-0.

Bid Award: PC Workstations for Detention Center

This is a bid award for PC Workstations for the Detention Center. The bids were formally solicited and opened on August 2, 1999 with the following results:

The Computer Shoppe:

Pentium II 450 MHz with 8GB Hard Drive	\$945.00
15 Inch Color Monitor	\$126.00
30 Days On Site Warranty, 1 Year Parts & Labor Included	<u>\$0.00</u>

Subtotal	\$1,071.00
For 3 Year On Site Warranty	<u>\$175.00</u>

TOTAL PER UNIT	<u>\$1,246.00</u>
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Emery Computers of Missoula County

Pentium II 450 MHz with 8GB Hard Drive	\$964.00
15 Inch Color Monitor	\$129.00
3 Years On Site Warranty Included	<u>\$0.00</u>

TOTAL PER UNIT	<u>\$1,093.00</u>
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There were only 2 bidders for the PC Workstations that are to be installed at the Detention Center. Neither bidder included their warranty policy (which was not explicitly requested in the bid package). Both bidders were requested to fax their warranty policy that would be included, concerning the products that were in the bid. Since the County currently has a 3 year on site service policy for PC's; the Computer Shoppe was asked to fax the costs associated with upgrading to the 3 year on site plan. Emery Computers faxed their 3 year on site plan which was already included as part of their bid.

It is recommended to award the bid to Emery Computers, which is not the lowest responsible bidder on the solicitation forms, but is the lowest and best bidder with the on site warranty included.

Commissioner Evans moved that the Board of County Commissioners approve the award of the bid for PC Workstations for the Detention Center to Emery Computers of Missoula County in the amount of \$1,093.00 per unit. Chair Kennedy seconded the motion. The motion carried on a vote of 2-0.

Chair Kennedy interrupted the Public Meeting to greet a delegation of Russian Women.

Decision: Petition to Vacate a Portion of Judi Drive (East Missoula)

This is a petition to abandon Judi Drive from the lot line common to Lots 2 and 3, Block 2 to the end of Judi Drive at the north boundary of Art Pine Addition located in the N 1/2 of Section 24, Township 13 North, Range 19 West, P.M.M., Missoula County, Montana (East Missoula).

The reasons for the request are as follows:

1. Art Pine Addition was platted some 40 years ago, however only three of the lots in the subdivision were ever built on (Lot 2, Block 1 has two homes on it, and Lots 1 and 2, Block 2 have one house for the two lots). Although dedicated to the public, Judi Drive (originally platted as Sunset Lane) was never constructed to County standards, and never accepted by Missoula County for maintenance.
2. The Easterly ± 100 feet of Judi Drive is presently a gravel drive sufficient to serve the existing homes, however the balance of this road has never been constructed. The "L" portion of Judi Drive that turns and runs north to the north boundary of the subdivision dead-ends into the balance of the Reich's ownership, and serves no useful purpose as they gain access via Staple Street, and Utah Street also dead-ends into their property.
3. The Reichs are proposing to vacate the unconstructed portion of Judi Drive and to relocate the boundaries between their three lots and the unnecessary drainage easement parcel such that they will end up with four lots that are all in excess of 20,000 square feet, and with Mountain Water service available, should be approvable by the Department of Environmental Quality as homesites.
4. This road vacation and relocation of lot boundaries will straighten out a bit of a mess that has existed for years, and convert what have been unbuildable lots (due to their size), into four usable "infill" building lots.

The public hearing on this matter was held July 28, 1999. A site visit was conducted by County Surveyor Horace Brown and Commissioner Evans on Monday, August 2, 1999.

Commissioner Evans stated she and Horace Brown felt there was no reason to deny this request and she supported the vacation of Judi Drive.

Horace Brown stated the road right-of-way was not necessary for this subdivision.

Commissioner Evans moved that the Board of County Commissioners approve the petition to abandon Judi Drive from the lot line common to Lots 2 and 3, Block 2 to the end of Judi Drive at the north boundary of Art Pine Addition, located in the N 1/2 of Section 24, Township 13 North, Range 19 West, P.M.M., Missoula County, Montana (East Missoula). Chair Kennedy seconded the motion. The motion carried on a vote of 2-0.

Hearing: Boundary Relocation (Reich) – Postponed from 8/4/99

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to relocate common boundaries within a platted subdivision, the Art Pine Addition.

Marvin Reich has submitted a request to relocate common boundaries between Lots 3 and 4 and the Utility easement of Block 1, and Lot 3 of Block 2 and various other land included in these lots as the result of the abandonment of Judi Drive by Missoula County, using the boundary relocation and aggregation of lots within a platted subdivision exemption to the Montana Subdivision and Platting Act. The lots are located in the Art Pine Subdivision, platted in the 1960's. The subdivision is located in East Missoula off of Fifth Street. The applicant proposes to relocate boundaries and aggregate parcels as shown on the exhibit submitted with the affidavit.

Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved the Board of County Commissioners approved the request by Marvin Reich to relocate common boundaries and aggregate lots by use of the boundary relocation and aggregation of lots within a platted subdivision exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Chair Kennedy seconded the motion. The motion carried on a vote of 2-0.

Hearing: Petition to Create Missoula County Sewer and Water District (Target Range area)

A petition has been received by the Elections office to create a Missoula County Sewer and Water District. The petition has been checked and verified. It contains signatures of 38% of the registered voters of the described district, thereby meeting the requirements of 7-13-2204 M.C.A.

Chair Kennedy: Before we have the hearing, what I'd like to ask is our counsel to talk about what the process is and stage in the process this hearing is and what happens in succession after this hearing. If you'll bear with us for just a moment, our counsel will give you that chronology.

Michael Sehestedt: Basically, what we have is a petition to create a County Sewer and Water District. Under the statutes, a petition is submitted with a proposed district that has been signed by 10% of the registered electors residing within the district. The Board of County Commissioners is obligated to call a hearing and give public notice thereof. Those steps have been met, we've received the proper petition, the number of signers has been validated by the Clerk and Records Office and we've given the required legal notice. The purpose of this hearing is to hear any protest there may be to the creation of the district and to provide information to the Commissioner so that they can determine what the appropriate boundaries are for the district. The limit on that is the Commissioners may not include in the district any lands that will not benefit therefrom and should include within the district any lands that will benefit from the creation of the district. The Commissioners may make the decision today, or they may adjourn the hearing or recess the hearing from time to time, provided, however, they have to make a decision on creating the district no later than 4 weeks from today's date. There is not a great deal of additional statutory guidance. If the district is created and constructs works, theoretically it should pay for itself through the use of users fees, users charges, or at least that is what is contemplated in the statute. Until such time as it establishes works and has related charges, any costs associated with the district would be funded by a tax on the taxable property within the district. With that background

...

Chair Kennedy: So before we begin the testimony what we'd like to do is, one spokesman for the proponents of this petition to come to the mic, identify yourself and explain to us the purpose of this petition, the purpose of this action. Is there anyone who wishes to do that? If not, we'll proceed to the hearing.

Barbara Reinhart: Good afternoon. My name is Barbara Reinhart and I was asked to begin this portion of the meeting by just reading for our audience the letter that was submitted with the petition to the County Commissioners. *"We, the residents of the easternmost area of the Target Range have presented you with petitions which have been signed by over 66% of the estimated voters of the proposed sewer and water district to serve our area. The fact that 106 signatures were collected in a mere 14 days attests to the strong feelings which the area's residents hold in the matter of self determination when it comes to local voting on sanitation issues regarding our area. The residents wish to elect a local board of directors which will then determine the future for our area. In accordance with State law, we ask that the sewer and water district be put to a vote of the area's residents as delineated on the map and legal description handed in with the petition. We strongly urge the Commissioners not to alter the boundary. If the Commissioners feel other areas of the County would benefit from a sewer district, we would suggest that those areas form a separate district. In addition, we would like to have the voting undertaken by mail ballot, as is afforded by State law."* As a side note and personal aside, my household is in favor of forming the Target Range Sewer District as we feel that a neighborhood elected board, acting upon the wishes of our community taxpayers, would be cognizant of our environmental needs and issues pertinent to our Target Range area. Would it be possible to hand the mic over now to one other person to get up and further explain? Thank you.

Chair Kennedy: Yes. Thank you Ms. Reinhart.

Joan Lloyd: Good afternoon, my name is Joan Lloyd. I am here on behalf of my husband, who couldn't be here. He is the landowner and I'm reading a letter from George. *"I, George Lloyd, have lived in my Target Range home since 1957 but I have had the lot since the Bureau of Land Management held a lottery for the WWII veterans. Having the ownership of the lot, I feel that we should have some say in our destiny. I and 66% of the people contacted in the area signed the petition stating that we wish to have our own sewer district. This tells me that the people in this area are wanting some say in the area and the control."* Thank you.

Chair Kennedy: Thank you Mrs. Lloyd. Next person please. Is there anyone who wishes to testify on this issue? Anyone at all before we close the hearing?

Greg Munther: I live at 1295 Lena Lane, which is in the Target Range area but outside the proposed sewer and water district. I would like to comment in the larger context that the water that flows through and beneath the proposed sewer and water district travels beyond that district and into a much wider aquifer which affects all of us in the community. Also, I would like to talk in context of water quality and not the veiled issue of annexation. I think already the County and the City together have worked on some plans with respect to sewer trunk lines into this area that have been agreed upon jointly by the County and the City, that would connect to the sewer system which is also scheduled to be upgraded to handle the additional nutrient work load into that system. It seems to me like this is, this proposal is in direct conflict with that, which gives these residents the opportunity to perhaps choose another direction to go with their sewage treatment, of which it doesn't seem to be a whole bunch of options that seem very legitimate. The cost of their own sewage treatment plant is probably unfeasible as well as excessively costly. There is no reason to believe that individual septic treatment systems would work, particularly at the kind of density that these residents enjoy now in that area. That is not a low density housing area, it's a fairly high housing density area, much like the rest of urban Missoula. It would seem to me to be incongruous to allow these folks to take off in a different direction when we already have some jointly developed plans and agreed to plans that are scheduled to be supported by the Federal government in terms of water quality aid in the future. In seems to me they need to look in the broader context of aquatic aquifers and what's good for the whole valley as opposed to a relatively small group of people living in a larger system.

Chair Kennedy: Thank you, Mr. Munther. Next person please. Is there anyone else?

Wally Sept: I live at 2103 33rd Avenue. I am a proponent of this particular sewer and water district. I am diametrically opposed to the gentlemen who just spoke as far as that is concerned. First of all I'd like to thank the Missoulain and others who either publicized this meeting or notified us that a hearing would be held today. Taking this thing back a few years, on March 12, 1980, an organizational meeting was held at the Target Range School. The purpose was to form a rural landowners association from the Target Range area. Ultimately, the name Target Range Homeowners Association became a reality. At that time, Bud Miller, Bud Blanchette, Cliff Baertsch, Russ Johnston, Roger Munro, John Milodragovich, Ron Grachan, Paul Pramenko, Sandy West, Betty Saul, Bob Erris, Don Kuykendal and I discussed the following agenda items.

Commissioner Evans: Could I interrupt for a second, Wally, and tell you that I have to leave here at 2:30 and I'd like to get all the testimony in before I leave, so what happened in the past to me is not as important as what it is you want today and why.

Wally Sept: I'm going to get to the situation very quickly.

Commissioner Evans: Thank you.

Wally Sept: I wasn't aware of the fact that we were on a time ...

Commissioner Evans: I have a tour at the Airport with the Forest Service at 3:00.

Wally Sept: Well, I'll try to make it as fast as I possibly can. Number one was to keep abreast of annexation legislation and to prevent annexation of the area. Two, we wanted then and continue to want to preserve our rural fire department. We felt it necessary to organize to protect our property values. Four, we were also committed to the observation of traffic patterns. Five, our concerns included the close monitoring of any attempt to rezone the area that would permit the destruction of our semi-rural way of life through incremental growth. Item Number 2 states the

period of duration of the corporation shall be perpetual. A few of the most important purposes of the corporation states: a) to promote the Target Range School boundary area of Missoula as a rural residential area of the first quality and b) to maintain and improve the environment, aesthetic quality, property values and such other features of the Target Range area of Missoula County as are desirable for the continuance of the area as a rural residential district of the first quality. The boundaries were then specified and the bylaws continued for several more pages. We lived through the illegal purchase of Fort Missoula land, the creation of Save the Fort and the return of said property to its rightful place. A religious organization was dissuaded from an attempt to alter the area. The city has recently created property and has become the owner of Fort property and is presently designated for athletic purposes. It's anyone's guess as to what may lie in store for its future use or to envision what tactic the City will use to force its influence upon us. Rest assured, our vigilance will continue. The question arises, why is this necessary? Citizens should not feel compelled to testify and testify and testify at public hearings to protect their property. This credo, in concert with the Missoula City Council has been and continues to proceed with their own agenda in spite of testimony opposing those agendas. Public perception continues that the Council, the Commissioners and other representative bodies accept public testimonials more as a hurdle to be overcome than to promote said testimonials to alter the agenda procedure or even to cancel a plan. So why are we doing this? We are aware of the ramifications of ground water quality and the arguments favoring the bureaucratic positions and don't agree with the process or the conclusions. Recently an attempt has been made to rezone the area, increasing the density tremendously. Including therein is the latest carrot, the implementation of density bonuses, which would destroy our semi-rural way of life. This is in keeping with a plan referred to as the Comprehensive Plan. In reality, ladies and gentlemen, the plan again is a growth promotion plan which is being used and altered as necessary, it has not been released for public review, comment or even alteration. This document has been developed over a period of almost 6 years now and little or no information has been forthcoming as to the negative impact that the plan entails on those areas deemed ready for development and annexation. I ask you, is it absolutely necessary for citizens to read the legal column in the newspaper as a means of determining what you're going to do to us next. No heed has been paid to the majority of the property owners and their wishes. What about the articles of incorporation that we worked so long and hard to develop? Is this community involvement? We believe that we have a right to influence and to control our own destiny. Our efforts and document has been negated and discounted as if it were nonexistent. Presently, the self-professed movers and shakers of the community, in concert with the bureaucratic planners are postured to deprive us of that right. No one is as sorry as we that our elected representatives have become aligned with real estate, I call them despots, who stand to gain financially and politically in an effort to alter our way of life. It is not government's responsibility to determine where to locate people or even to relocate them. People can and should do that for themselves. Before long it would not surprise me that the power of eminent domain would be implemented to accomplish any item on your agenda. We understand that drooling desire to increase the density in the Target Range area. We also disagree emphatically with that desire. There is no reason to concede to the compulsion advocating wall to wall houses as displayed east of Reserve Street. Under the Big Sky, ladies and gentlemen, the development is a big mess. We desire to remain a semi-rural area with one resident per half acre at the most. We prefer one resident per acre, one resident per half acre is maximum, that is enough. And to hell with the concept of infill and let the zoning remain as it is. As a means of protecting our private property rights, we urge you to listen to the 66% within the designated area and who affixed their signatures to a petition to create a sewer and water district. This will support Target Range residents in their efforts to maintain a semi-rural way of life as specified in the articles of incorporation of the Target Range Homeowners Association. When the majority of citizens speak, it becomes the duty and responsibility, in my judgment, for elected officials to respond to the electorate as the public servants that you are. Anything to the contrary becomes an elected autocracy. This is where we appear to be in Missoula. The Chamber has a poster stating "Missoula, We Like It Here." True. We do like it here. But it could be one heck of a lot better without the socialistic trend in City and County government.

Chair Kennedy: Wally, excuse me.

Wally Sept: I'm closing off.

Chair Kennedy: Okay.

Wally Sept: We hope and trust that the request to create our own sewer and water district will be approved because the citizens have spoken. Thank you. I don't appreciate the interruption when you call for a fair hearing.

Commissioner Evans: I have a question for you, sir.

Wally Sept: Pardon?

Commissioner Evans: I have a question for you.

Wally Sept: Alright, very fine.

Commissioner Evans: Would you explain to me why you chose to include County recreation land in this proposal?

Wally Sept: Well, it seems as though the City and the County are walking in lock step with some of the plans that are in, you know, planned for the future. We in the Target Range area, living outside of the City limits, we cannot, we cannot vote for the City Council people and you people who are the County Commissioners are supposed to be representing us, but as far as we are concerned in many instances you are not, because you are walking in lock step with the City. And this is to develop that particular land. This Comprehensive Plan, I went over here not too long ago to ask for a copy, I was willing to pay for it. It's been six years now, the copy isn't available to anybody for any particular comment, so there is a growing distrust about City and County government.

Commissioner Evans: So the reason you want to include it in your sewer and water district is so that you can tell us how to develop it, is that what I hear you saying?

Wally Sept: Not necessarily, not necessarily. But this gives a comprehensive view of, you know, how the people feel in that particular area.

Michael Sehestedt: May I ask a question? I want to get clear on this. Wally, this is a petition to create a sewer and water district.

Wally Sept: That is correct.

Michael Sehestedt: Can you explain to me in fairly short form what the benefit to the park ground is of being included in your sewer and water district?

Wally Sept: What the benefit of that particular ...?

Michael Sehestedt: What's the benefit to the park ground of being included in your proposed sewer and water district? How does the property benefit from inclusion?

Wally Sept: I would have to think about that.

Chair Kennedy: The reason for the question, Wally, is the law ...

Michael Sehestedt: That's the test.

Chair Kennedy: ... requires us to assess whether or not the property that is included in the district would benefit from the formation of the district. So the question is, how, in your estimation, does the land that the County owns out there, the taxpayers owns out there that is open, how will that land benefit from inclusion in the sewer district that you propose.

Wally Sept: Let me think about that and I'll get back to you.

Chair Kennedy: Thank you. Is there another, other people who would like to testify?

Charlene Miller: I live at 3416 South Avenue. And of course we've been involved in trying to get a sewer and water district so that we can elect a board to represent the area and not have individuals have to fight for everything, to protect what we want out there. I'm not sure what you're referring to in terms of park land. The boundaries that we had decided on were 33rd down north to 37th and back on South Avenue.

Michael Sehestedt: Here's a copy.

Charlene Miller: Well, I think that copy that was in the paper is wrong.

Chair Kennedy: This was attached to the petition, Charlene, that's what we're looking at.

Charlene Miller: That was not my understanding. I don't know who did this.

Chair Kennedy: That's the official petition that was presented to us. It is the only evidence that we have that shows the territorial extent of the proposed sewer district.

Charlene Miller: Okay. I think if you read the ... maybe Jerry can clarify that. But let me just go on a minute to let you know that we need to form and the intent as I understood it and we had all talked about and I don't know how Spurgin Road and Tower Street Complex got involved in that. However, the intent was for 33rd down north to 37th and up South, to elect a board to represent us because there are plans that we just happened to find out about of a sewer line running down 33rd. And you know what a threat that is to us. If it was a line that could be used in conjunction with the residents in the area, without asking to go into the City, which, you know, should be, because we all are concerned about the aquifer out there. Just as much as anybody else. And you know, as well as I do, there's still areas in the City boundaries that are polluting the ground water. However, our duty is to protect this. But we have to have someone to represent us and not do it on individual basis, we also need people from government, County government, Health Department, Sewer and Water District, coming to us and talking to us about these matters. All we find out is, happened to found out from the, through the grapevine, that somebody had gotten a hold of a paper showing that the sewer line was going down South, down 33rd, over to Spurgin and then I think over to Grove Street. Nobody came out and talked to our Homeowners Association, which has been active since 1980, about this proposal and how it would affect us and work with us. And that's one thing, as a homeowner out there for 27 years, that we would like to see is more working with the people in the area and not the government going off and doing their thing without working us. I think you'd have better response than us getting up and fighting you all the time. But again, on this Tower Street area being involved, I don't know about that, I wasn't aware of that.

Chair Kennedy: Thank you, Charlene. Next person please? Can I get a show of hands of how many additional people would like to testify today. I would also tell you that the way this process works, to refresh what Michael Sehestedt said, that we can, within the next four weeks, have additional hearings if we think that it's necessary, so this may not be the end of your opportunity to speak on this issue. We expect to not decide today, it will be decided within that four week window that is required by law. Bruce?

Bruce Bender: I'm the Director of Public Works from the City of Missoula. The Mayor's Office and I have received some calls and the Public Works had also seen the article in paper about this particular proposal. Our concern is that the issue of annexation versus the district, etc., have some clarity to it. That it's important to the residents in the area to understand that the sewer and water district certainly has its positive sides in regards to being organized and going after funding, etc., but it does not necessarily give it any special protection, I guess, or rights, whatever, in regards to annexation with the City. That's a pretty important issue and I'd hate to ... we're concerned is that it is being formed on that premise only. This area is within the newly adopted wastewater facility service area. That plan was just recently adopted and therefore is planned to be and our wastewater treatment plant will be designed to provide public sewer to this area at sometime in the next 20 years under the plan. Therefore, you know, to, it's important for the district to understand that, that that plan that has service capability. The State will recognize that and also will expect

that any service, in that any public sewer system in that area, will connect to the City sewer. In regards to the issue of planning, we did notify all the homeowners associations in these areas of that plan and did have meetings in that particular area in the planning process and can provide any kind of record of that regard, that the public was asked to be involved in numerous occasions in regards to the wastewater facilities plan which had on it proposed to serve this area in bringing public sewer to this area. In regards to the annexation issue, there is no doubt a record where particular areas have negotiated with the City of Missoula in regards to annexation on a delayed basis. Historically, you can look at the Rattlesnake area that delayed their annexation for about five years after public sewer. Linda Vista has a current agreement with the City, they're receiving public sewer from the City and then annexation could possibly happen even this year, at the end of this year. That was delayed by, the sewer has been there for over five years. Currently right now East Missoula is negotiating with the City for contract for delayed annexation. But no one has negotiated a non-annexation. Annexation has been the parameter on all those issues. The point we're trying to make out, you don't have to be a district or whatever to enter into those kind of discussions. Those are all open to whatever. We have to say from the City's perspective the East Missoula Sewer District has been very successful as an organized effort in obtaining funding for its projects of building a public sewer system there that will connect to the City of Missoula. And they've been very successful at that. If that's the aim of this group is to obtain funding, that's certainly something that has been shown benefit for that in that area. But to use it as a district as a mechanism to avoid annexation or condition it or whatever, that can happen in any all modes or, you know, the City's always been willing to discuss those issues with the County Commissioners. The County Commissioners have clearly been representative over those homeowners association have also been involved in those. Thank you.

Chair Kennedy: Thank you. Next person please. Anyone else?

Alice Austin: I live outside the new proposed district. I want to say that I strongly oppose the new proposed district because I don't think its planning gives adequate respect for the aquifer and for the needs of water protection in the area. Perhaps for the people in that district itself and certainly for the people who are downstream in the water flow pattern. I think Peter Nielsen, who is here, might gives us some ideas of how this situation differs from the situation in which we voted our sewer and water previously and the vote failed for the sewer and water district by a very small number of votes. But the Target Range Homeowners Association does not represent Target Range as a whole by any manner of means. They were defeated in the last vote.

Chair Kennedy: Thank you, Ms. Austin. Next person please?

Peter Nielsen: Good afternoon. My name is Peter Nielsen, Missoula City-County Health Department. I'm the Environmental Health Supervisor in the Environmental Division. A couple comments about this area. We're neither opposed or in support of the district per se, but have a few comments that I think you ought to consider relative to the situation at hand. This is a relatively small area in which to provide independently either sewer or water service economically. It raises the question immediately in my mind at least, what is the purpose of creating a sewer and water district. I don't hear a lot of folks talking about really wanting to build a sewage treatment facility or build a public water system out there. That doesn't seem to be the primary intention. That concerns me that a section of State law that is a valid and important section of State law that's used for that purpose might be used for some other purpose here. I'm not sure that it's needed, that either public sewer or water is needed for the entirety of that particular area that is outlined on the map. You've raised the question as to whether it's needed for the recreation, I think that's a valid point. Bruce Bender mentioned that the City has gone through a lengthy process and I don't remember, it's been at least four or five years now, at considerable expense. The County has been part of that process, our department has been part of that process and the public has been rather extensively involved in that process, actually, over the past several years. The facilities plan, which it can be relied upon by the State in making decisions in how to invest in public sewer and water infrastructure. It has been adopted by the City. It does include this particular area. It would cause us some concern to see duplication of effort in terms of the limited financial resources that are available from the State, for example, for grant funding and low interest loan funding, involving loans from State for public water and public sewer. To see duplication of effort for two different systems into the same area. I think that's something that we need to watch out for here. I also want to mention, that, while of course folks do know that the sewer main has begun to move into this area this summer, down River Road and Grove Street, that has been done at the desire of folks who want the sewer so that they can make the most use of their property. That's the reason that's it gone there, it hasn't been a grand City scheme or anything like that, but it is something that folks have wanted and desired and that's the reason it's going this summer in that direction. I want to remind you that the City Council, the City and the County Commissioners, the City-County Board of Health have all signed on to the Voluntary Nutrient Reduction Program which does commit us all to working together toward protection of water quality in the Clark Fork and Bitterroot Rivers. Talked about the aquifer, I think everyone is pretty keyed in on protecting the aquifer. We have to remember our commitment to protecting the quality of the river as well. One of the commitments we made in this document was to over the period of the next ten years, providing public sewer or some other way of eliminating the nitrogen load from approximately half of the existing septic systems in the Missoula urban area in ten years. And that includes this area. So in some way, we have a problem that we need to solve out there, whether it's through extension of City sewer or creation of an independent sewage treatment facility, that's fine, but I'm very, very skeptical as to whether this can be done economically all on their own. East Missoula made a very sincere effort at creating a sewer and water district and they did a good job of obtaining funding and doing engineering studies. They wanted to build their own facility. That didn't end up working out. It didn't end up working out because it wasn't economical for them to do so and they have chosen to, instead, pursue connection to the centralized facility, the Missoula facility. It's very likely that would be the same thing that could happen here, which, I guess, my gut feeling is that's the reason the folks are really interested in this issue, creating a sewer and water district to position themselves for negotiating with regard to annexation. If that's what the folks want to do and tax themselves for, I guess that's fine, but it is not necessary to create a sewer and water district. I'm not sure it's appropriate to, but it certainly isn't necessary to create a sewer and water district for the simple purpose of giving you a board of directors that can negotiate with the City. And the fact that the County has negotiated with the City for annexation in the past without the existence of a sewer and water district is ample evidence to support that point. Again, I just have those concerns about it and wanted to make those known to you and I'm available for questions is you have them.

Chair Kennedy: Thank you, Mr. Nielsen. Any other person who would like to testify?

Gary Botchek: Real briefly, Barbara. I reside at 2500 Gunsight Court in Target Range. I'm outside the development area. For the record I'd like you to add my name to Wally Sept's comments, because I believe strongly in the nature of what he stated. Secondly, I think if the County Commissioners want to help this area out, clearly, it doesn't take a rocket scientist to figure out by bringing sewer system in there, that the density of that area is going to grow dramatically. The best thing you can do is commit to the existing zoning that is out there and allow that rural sanctuary for what people have moved out there for to continue. To do it the other way I think basically you're going to see concerns and issues like this arise in any way, shape or form to maintain that situation. So, I'd ask you to meet the desires of the zoning that's out there and stop trying to increase by any means the density against the people's will. Thank you.

Chair Kennedy: Next person please. Thank you Mr. Botchek.

Sue Mathewson: The one thing with the proximity of large area of open space is a small district like this could potentially a least explore land application or something other than putting waste directly into the river. I think it's really sad that in a community that's so conscious of the environment that we end up putting all our waste, basically to the level of treatment that we do, into the river. I'm sorry that what happened to East Missoula happened, because they were trying to avoid using the river as a dumping ground and I think it's kind of a really archaic thing that we do. I guess that's the only comment that I have.

Chair Kennedy: Thank you Ms. Mathewson. Next person please. Is there anyone else? Anyone else today? Then we'll close the hearing. Again, the process is that the law requires us to act within a 4 week period and we have to take into consideration those provision under the law which talk about the benefit to the land and the size of the district and we will do that in the ensuing weeks and, unless there is some disagreement, will review and set September 1st, which is three weeks from today, for a decision on this issue. Unless there is any disagreement about that. I mis-spoke about the hearing being adjourned, it is continued in fact until that day or if we need additional hearings before that time, we'll provide notice of that. On September 1st, we expect to continue the hearing and take a decision on the formation of the petitioned sewer district in Target Range. That concludes our business. Is there any other business anyone would like to bring up or any comment anyone would like to make before we adjourn? Thank you, we're adjourned.

There being no further business to come before the Board, the Commissioners were in recess at 2:25 p.m.

THURSDAY, AUGUST 12, 1999

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

ADMINISTRATIVE MEETING

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

Contract – Chair Kennedy signed a Contract between the Montana Department of Public Health and Human Services and the Missoula County Partnership to Strengthen Families to provide home visiting services and intensive family support services to families with children at risk of abuse and neglect. Performance begins on July 1, 1999 through June 30, 2000. Compensation shall be up to \$134,000.00. The Contract was returned to Peggy Seel in OPG for further handling.

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with Partnership Health Center to provide basic needs assistance for indigent residents of Missoula County. Value of the Agreement is \$190,000.00. Term of the Agreement is from July 1, 1999 through June 30, 2000.

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with Watson Children's Shelter to purchase services for children who are victims of domestic violence, abuse and neglect in Missoula County. Value of the Agreement is \$25,000.00. Term of the Agreement is from July 1, 1999 through June 30, 2000.

Other items included:

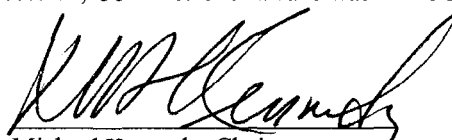
- 1) The Commissioners approved a 310 Application to permit excavation in the streambed of the Clark Fork River to repair a broken water main near Hartman Street.
- 2) The Commissioners approved a request from the Montana Community Development Corporation for a \$4,000.00 grant for expenses incurred when relocating the office to 103 East Main.

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

FRIDAY, AUGUST 13, 1999

The Board of County Commissioners did not meet in regular session; Commissioner Evans was at the Fairgrounds all day.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, AUGUST 16, 1999

The Board of County Commissioners did not meet in regular session; Commissioner Kennedy was out of the office all day due to illness, and Commissioners Carey and Evans were out of the office all day.

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Lynne Carlisle as principal for Warrant #67429, issued 7/20/99 on the Missoula County MCPS Payroll Fund in the amount of \$201.23, not received in the mail.

TUESDAY, AUGUST 17, 1999

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

Claims List -- The Commissioners signed the Claims List, dated August 16, 1999, batch numbers 85, 89, 92, 93, 94, 95 and 96, with a grand total of \$634,452.21. The Claims List was returned to the Accounting Department.

Plat -- The Commissioners signed the plat for Brewerton Subdivision, an amended minor subdivision plat of Lot 6, Block 2, Momont Industrial Park, Phase I, located in the SW1/4 of the SW1/4 of Section 36, T14N R20W, PMM, Missoula County, a total subdivision area of 1.50 acres gross and net, with the owner of record being Craig Brewerton.

ADMINISTRATIVE MEETING

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

Contract -- The Commissioners signed a Contract with Idaho Asphalt Supply, Inc. to provide 280 tons of CRS2P Oil, at \$174.40 per ton, for a total price of \$48,882.00 for the Missoula County Road Department.

Payroll Authorization Forms -- The Commissioners signed Payroll Authorization Forms for Bill Silverman, OEM Coordinator, and Gwen Sebestin, OEM Secretary. The Forms were returned to Bill Silverman in OEM for further handling.

Amendment of Request -- Chair Kennedy signed an Amendment of Request for Application/Modification of Assistance Agreement with the Bureau of Land Management increasing funding for the Blackfoot River Road maintenance project from \$225,000.00 to \$259,000.00. The Amendment was forwarded to Mary Clark at BLM in Billings for signature and handling.

Resolution -- Chair Kennedy signed a Resolution authorizing various County staff to obtain state and federal surplus goods from the State of Montana Property and Supply Bureau. The Resolution was returned to the Property and Supply Bureau in Helena.

Extension -- The Commissioners approved a 3-month extension for Lowe's Court Subdivision for Lease or Rent, making the new filing deadline December 2, 1999, with a letter to Ed Lowe.

Agreement -- The Commissioners signed an Agreement with Vydas Resources Inc, dba VRI, for provision of an Employee Assistance Program for Missoula County employees. Term of the Agreement is July 1, 1999 through June 30, 2000. Compensation shall be \$2.14 per employee per month for services provided by VRI. The Agreement was returned to Patty Baumgart in Personnel for further signatures and handling.

Resolution -- The Commissioners signed Resolution No. 99-054, a resolution to abandon a GLO Road, from the center of Union Creek, in the Potomac area.

Resolution -- The Commissioners signed Resolution No. 99-055, a resolution to abandon Judi Drive, from the lot line common to lots 2 and 3, Block 2 to the end of Judi Drive at the north boundary of Art Pine Addition.

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

WEDNESDAY, AUGUST 18, 1999

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

Claims List -- Commissioners Evans and Kennedy signed the Claims List, dated August 17, 1999, batch numbers 98, 99, and 102, with a grand total of \$105,585.39. The Claims List was returned to the Accounting Department.

PUBLIC MEETING -- August 18, 1999

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

Public Comment

None

Routine Administrative Actions

Commissioner Kennedy moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$740,037.60. Commissioner Carey seconded the motion. The motion carried on a vote of 2-0.

There being no further business to come before the Board, the Commissioners were in recess at 1:31 pm.

THURSDAY, AUGUST 19, 1999

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

Claims List -- Commissioners Evans and Kennedy signed a Claims List, dated August 18, 1999, batch numbers 97 and 104, with a grand total of \$15,058.74, and a Claims List, dated August 19, 1999, batch number 109, with a grand total of \$2,224.72. The Claims Lists were returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Shoreline Permit -- The Commissioners approved and Chair Kennedy signed a Shoreline Permit for Carl Kreitzberg to install a dock on Placid Lake at 9555 N. Placid Lake Road. The permit was returned to Brian Maiorano in OPG for further handling.

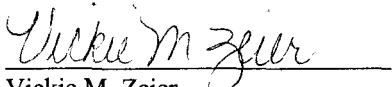
Memorandums of Agreement -- The Commissioners signed five Memorandums of Agreement:

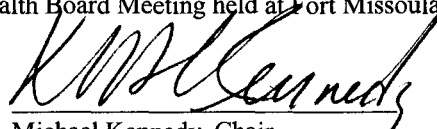
1. with the Missoula Child and Family Resource Council to provide parenting classes to families with children ages 0-3 who are at risk of abuse/neglect. Duration of the project is July 1, 1999 through June 30, 2000. Value of the Agreement is \$24,491.00.
2. with the Western Montana Mental Health Center to provide mental health crisis response and stabilization services for Missoula County residents. Duration of the project is July 1, 1999 through June 30, 2000. Value of the Agreement is \$170,000.00.
3. with the Child and Family Resource Council to purchase parent education services for families. Duration of the project is July 1, 1999 through June 30, 2000. Value of the Agreement is \$5,000.00.
4. with Women's Opportunity and Resource Development, Inc. -- Family Basics, to provide basic needs assistance for indigent residents of Missoula County. Duration of the project is July 1, 1999 through June 30, 2000. Value of the Agreement is \$5,000.00.
5. with Child Care Resources, Inc. to provide technical assistance and training to child care providers who serve working families in Missoula. Duration of the project is July 1, 1999 through June 30, 2000. Value of the Agreement is \$51,400.00.

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

FRIDAY, AUGUST 20, 1999

The Board of County Commissioners did not meet in regular session. Commissioners Evans and Kennedy were out of the office all day. Commissioner Carey attended a Mental Health Board Meeting held at Fort Missoula during the day.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, AUGUST 23, 1999

The Board of County Commissioners did not meet in regular session. Commissioners Carey and Kennedy attended the MACo District 10 and 11 Counties Meeting in Polson, and Commissioner Evans was out of the office all day.

Plat -- The Commissioners signed the plat for The Meadows -- Phase 2, a residential/recreational development of the Double Arrow Ranch at Seeley Lake, MT, located in Sections 11 and 12, T16N R15W, PMM, Missoula County, a total area of 7.93 acres, with the owner of record being Double Arrow Enterprises, Inc.

TUESDAY, AUGUST 24, 1999

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

ADMINISTRATIVE MEETING

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

Resolution -- The Commissioners signed Resolution No. 99-056, a budget amendment for the Sheriff's Department in the amount of \$10,000.00.

Payroll Transmittals -- The Commissioners signed three Payroll Transmittals:

1. for Pay Period 15, with a total Missoula County payroll for \$646,259.40;
2. for Pay Period 15-02, with a total Missoula County payroll of \$49,801.00;
3. for Pay Period 16, with a total Missoula County payroll of \$656,486.38.

All three documents were returned to the Auditor's Office.

Agreement -- Chair Kennedy signed an Agreement with the Montana Department of Environmental Quality for the purpose of assisting Missoula in conducting its own air pollution control program. Performance shall begin on July 1,

1999, and must be completed by June 30, 2000. Compensation shall be up to \$84,856.00. The Agreement was returned to Judy Johnson in the Health Department for further handling.

Professional Services Contract – The Commissioners signed a Professional Services Contract with Chem-Safe Environmental, Inc. to provide waste collection, bulking, transportation and disposal services for the Health Department's household hazardous waste collection event on September 16-18, 1999. Compensation shall be as follows: chemist - \$2,100, lab packing special wastes - \$73/drum, aluminum paint - \$135/drum, sludge - \$220/drum, lab pack drums - \$180/drum, lab pack drums (oxidizers & reactives) - \$290/drum, bulking latex and oil-based paint/flammable liquids - \$100/drum, drums for bulk packed wastes - \$23/drum. The Contract was returned to the Health Department for further signatures and handling.

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with Poverello Center to provide basic needs assistance for indigent residents of Missoula County. Value of the Agreement is \$40,000.00. Term of the Agreement is July 1, 1999 through June 30, 2000.

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

WEDNESDAY, AUGUST 25, 1999

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

Claims List – The Commissioners signed the Claims List, dated August 24, 1999, batch numbers 111, 114, and 116, with a grand total of \$124,919.24. The Claims List was returned to the Accounting Department.

Community Incentive Grant Documents – The Commissioners signed a letter of support, and Chair Kennedy signed the application for a Community Incentive Project grant from the Addictive and Mental Disorders Division of the Montana Department of Public Health and Human Services. The documents were returned to Peggy Seel in OPG for further handling.

PUBLIC MEETING – August 25, 1999

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

Public Comment

None

Routine Administrative Actions

Commissioner Kennedy moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$124,919.24. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

There being no further business to come before the Board, the Commissioners were in recess at 1:31 pm.

THURSDAY, AUGUST 26, 1999

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

Claims List – The Commissioners signed the Claims List, dated August 26, 1999, batch number 118, with a grand total of \$67,098.09. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Letter – Chair Kennedy signed two letters to Mark Baumler, State Historic Preservation Officer, waiving rights to comment on the proposed listing of Lydia McCaffery's Furnished Rooms and the Simons Block in Missoula, MT. The letters were forwarded to the Historical Society in Helena.

Resolution – The Commissioners signed Resolution No. 99-057, a resolution of intention to create Rural Special Improvement District #8466 for the purpose of relocation of a railroad crossing in Huson, MT so that it is at a safer, 90 degree angle over the tracks. The public hearing date was set for September 15, 1999 at 1:30 pm in Room 201 of the Courthouse Annex.

Memorandums of Agreement – The Commissioners signed three Memorandums of Agreement:

1. with Missoula Youth Homes, Inc. to provide shelter care services through its Attention Home for troubled children in Missoula County. Value of the Agreement is \$30,450.00. Term of the Agreement is July 1, 1999 through June 30, 2000.
2. with the YWCA of Missoula to provide comprehensive services for victims of domestic violence in Missoula County. Value of the Agreement is \$16,144.00. Term of the Agreement is July 1, 1999 through June 30, 2000.
3. with Friends to Youth to provide counseling and education services for non-SED youth and their families. Value of the Agreement is \$12,000.00. Term of the Agreement is July 1, 1999 through June 30, 2000.

Counter Offer – The Commissioners signed a Counter Offer for Donald J. Snavely and/or Assigns for Lot 3A of the Missoula Development Park Phase I. Sales price shall be \$135,000.00. The Counter Offer was returned to Katie Ward at Properties 2000 for further handling.

LEPC Grant Application – Chair Kennedy signed USDOT-HMEP grant application for the Missoula LEPC to improve access to local facility chemical storage records for responders and the public. The application was returned to Bill Silverman, OEM Coordinator, for further handling.

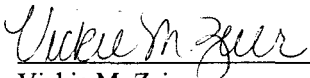
Other items included:

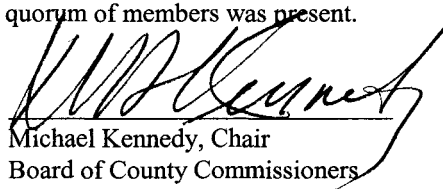
- 1) The Commissioners appointed William Towle and Rebecca Mosbacher to the Missoula Public Library Board.

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

FRIDAY, AUGUST 27, 1999

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


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, AUGUST 30, 1999

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

TUESDAY, AUGUST 31, 1999

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

Claims List -- Commissioners Evans and Kennedy signed the Claims List, dated August 30, 1999, batch number 124, with a grand total of \$210,717.09. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Memorandums of Agreement – The Commissioners signed four Memorandums of Agreement:

1. with the Art Museum of Missoula to provide an art museum in Missoula County. Value of the Agreement is \$138,575.00. Term of the Agreement is July 1, 1999 through June 30, 2000.
2. with Missoula Aging Services to provide Aging Services programs in Missoula County. Value of the Agreement is \$151,000.00. Term of the Agreement is July 1, 1999 through June 30, 2000.
3. with Women's Opportunity and Resource Development, Inc – Futures, to provide services to benefit pregnant and parenting teens. Value of the Agreement is \$14,602.00. Term of the Agreement is July 1, 1999 through June 30, 2000, and is contingent upon receipt of Montana Department of Public Health and Human Services grant funds by Missoula County.
4. with Child Care Resources, Inc. to provide services for families involved in the Partnership to Strengthen Families project. Value of the Agreement is \$10,850.00. Term of the Agreement is July 1, 1999 through June 30, 2000.

Resolution – The Commissioners signed Resolution No. 99-058, an Application for Tax Deed for SUID #1064800, Lows – Lot 1 & 2, Frac of 3 Blk 16 (Bex property).

Shoreline Permit – The Commissioners approved and Chair Kennedy signed a Shoreline Permit for Richard Barnes, represented by Don Larson, to install a dock on Big Sky Lake on property described as the Knutson Addition to Big Sky Lake Estates. The permit was returned to Brian Maiorano in OPG for further handling.

Collection Agent Contract – The Commissioners signed a Collection Agent Contract with Collection Bureau Services to serve as a collection agent for checks returned due to insufficient funds. Compensation to Missoula County is 100% of the amount of the check. Compensation to CBS will be any charges passed on to the maker of the check, in accordance with State regulations. Contract is effective September 1, 1999 and is continuous unless cancelled by either party. The Contract was forwarded to the Clerk and Recorder for filing.

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

WEDNESDAY, SEPTEMBER 1, 1999

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

Agreement Modification – Chair Kennedy signed Modification No. 4 of Agreement 270054 (Corrected Copy) with the Montana Department of Environmental Quality concerning advance funding for the Lolo facility plan for wastewater treatment works. Completion date is amended to December 31, 1999. The Agreement was forwarded to DEQ in Helena.

PUBLIC MEETING – September 1, 1999

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioner Barbara Evans, Commissioner Bill Carey, County Surveyor Horace Brown, County Clerk & Recorder Vickie Zeier, Deputy County Attorney Colleen Dowdall and Chief Civil Attorney Michael Sehestedt.

Public Comment

None

Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$277,815.18. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Hearing: Petition to Establish Snowdrift Lane as a County Road

This is a petition to establish "Snowdrift Lane from Mullan Road to Tract 10B and 10C of Certificate of Survey 3714 located in Sections 3, 4, 9 and 10 in Township 13 North, Range 20 West, Missoula County, Montana." There is also a request to establish a Rural Special Improvement District for this area.

The reasons for the request are as follows:

1. Public maintenance improvement.
2. Paving.

The following landowners have been notified:

Scott Palmer	Allen & Cindy Hals	Mark H. Ketcham
Dennis & Sue Hanson		
Gerhard & Vickie Polakow	John & Judy Bukovatz	Ray Bukovatz
Forrest & Jennifer Gue		
Arlene Kamura	Norman & Eileen Carey	Jim & Sharon Palmer
Dennis & Julie Tonkin		
Kevin & Jody Hammond	Randy Olsen	Loy & Kathy Olsen
Jerome & Lonell Curry		
William & Becky Bucher	Scott & Karen Tuxbury	Nick Kaufman
Troy & Janie Kurth		
Mike & Colleen Sickles	Dean & Renee Dwigins	Cindy Stemple
Karl & Carrie Jones		
John Fragnito	Tim & Elaine Burt	Loree Olson
Ed & Betty Worden		
William Iverson	William & Helen Cunningham	Ronald & Kathleen Perkins

Michael Sehestedt stated what the Commissioners have before them is a petition to establish Snowdrift Lane as a County road. The petition process is the traditional method through which a County road can be established. It is not used frequently and the other side of the procedure would be a petition to abandon a road. Upon the petition of any 10 or more freeholders within the road district (Missoula County), they can request the Board conduct a public hearing on whether or not the road petitioned for should be established as a County road. The Commissioners will take testimony on the issue today, then adjourn the hearing for at least a week. In that time, the County Surveyor and one Commissioner need to make a site inspection. They will report back to the Board at the continuation of the hearing and at that time a decision will be made.

Chair Kennedy opened the public hearing.

Tim Wolfe, Territorial Engineering and Surveying, stated several of the homeowners in the area were present today. Sharon Palmer has been spearheading this effort. The residents would also like to create an RSID (Rural Special Improvement District) to pave Snowdrift Lane. That petition is ready for circulation. Mike Sehestedt recommended this procedure be done first to see if there is any problems from the County's side. This request is for the road to be taken over as a County road. In another request of this type for Sapphire Drive, the Board accepted it as a County Road contingent on the successful acceptance and completion of the paving RSID. That is the same direction this petition is heading.

Nick Kaufman, a resident of Snowdrift Lane, stated this road is constructed in Grass Valley Silt Loam, a very fine soil which creates a dust problem similar to Deschamps Lane. There is an effective Homeowners Association but they will not be effective in improving the road and taking care of the dust issue. The road requires some reconstruction and paving and will not happen without the help of the County Commissioners. They have struggled with this for six years. They have looked at RSID and special assessments to homeowners and the RSID is probably the best way to accomplish this equitably. This road needs to be made a County road to attempt to create this RSID. Secondly, the priority is for the main

portion of Snowdrift Lane to be paved. There are four extensions of cul-de-sacs off the main portion of the road. This petition, then, is for a portion of Snowdrift Lane to be a County road and to be paved. If all the little cul-de-sacs were included, which would certainly be a benefit, it would be unlikely for the RSID petition to be successful. When the inspection is done, he wanted it noted that every person lives on Snowdrift Lane, there are no other street names out there, but there are other cul-de-sac roads. They are not asking for those to be included but they should be considered. He thanked Tim Wolfe and Sharon Palmer for their work on this petition.

Troy Kurth stated his community has struggled with this road for the past five years he has lived there. Since he moved there, a number of properties have been developed and several yet to be developed that will use Snowdrift Lane as their primary access. They have had an effective Homeowners Association for a number of years. However, there seems to be reluctance to maintain the road by the Homeowners Association. They currently pay approximately \$100 per year each to maintain the road. In the last year there has been one grading of the road. The Homeowners Association has not done an adequate job of maintaining this to the standard of a good gravel road. To do so is possible but would require approximately twice as much of an investment, about \$200 per year per homeowners, not property owner. The road maintenance is currently assessed against the homeowner and the absentee owners have not been asked to contribute for road maintenance. Absentee owners will be asked to contribute for improvements as it increases the value of the property. He is in support of the petition for adequate dust control and development of the road within cost constraints. This is more than a paving issue. This road is substandard and will not support paving in its existing state. It has to be a major reconstruction project, including extensive excavation of the existing roadbed, a separation barrier and base course to support a minimum of 2 inches of pavement. This would cost more than if it were new construction. A major issue to him and several of his neighbors is the cost to complete this reconstruction. They have been quoted as high as \$6,500 per property owner. With a 20 year life on the project, it would cost him \$18,500 to do this, or \$1,000 per year. It is important to him to know what cost he will have to bear in order to enjoy this benefit. A preferred method of payment for the RSID has not been made known. The \$6,500 cost was based on a deed item. There are 6 parcels that are 20 acres or larger, all zoned one dwelling per five acres. One of those parcels has been divided into 4 lots and those lots are on the market at \$63,000. Four years ago he paid \$19,500 for his five acres. There is also one 15 acre parcel and three 10 acres parcels. These total 27 undeveloped lots that can be subdivided into 5 acre lots. He felt the RSID should be based on a per acre ownership basis. Those that have large acreage should pay a proportionate share for this improvement which will increase the value of their land. That would lower his cost as well. He is not in favor of subsidizing the large property owners to bring this road improvement about, without some guaranteed return. If the per acre assessment is not acceptable, an alternative would be similar to what the community did when the natural gas line was brought in. They all paid for the natural gas hookup. If a new person hooks up, then the existing owners are reimbursed. The large property owner who may not wish to sell his property at this time, could accept a lien on their property plus an appropriate percent for increased valuation over the life of the investment, approximately cost plus 50%. Should they divest themselves of that property, the contributing property owners of record would receive a reimbursement of their costs. If the owner elected to never sell their property, they would never have to pay the penalty. Should they decide to capitalize on the improved investment and subdivide into the zoned 5 acre parcels, then the other property owners would be reimbursed for maintaining the increased valuation for them.

There being no further comments, Chair Kennedy continued the hearing to next Wednesday, September 8, 1999. In the meantime, the County Surveyor and one County Commissioner would do a site inspection and report back to the Board. Additional testimony will be taken and a decision will be made at that time.

Commissioner Evans stated the standard policy for acceptance of a County road is that the road be brought to County standards. She asked Horace Brown if that was still the process?

Horace Brown stated that was correct.

Commissioner Evans asked Horace Brown if the road was brought to County standards, was he prepared to accept it for County maintenance at that time?

Horace Brown stated if the County approved the road, yes.

Nick Kaufman stated Tim Wolfe mentioned Sapphire drive was accepted as County right-of-way contingent on passage of the RSID. He asked if it was possible for Missoula County to accept the public right-of-way if the RSID doesn't pass. It is a private road and won't be maintained as it doesn't meet County standards, but at least the hurdle of it being a public right-of-way has been passed. This is an important public health and safety issue. He appreciated Troy Kurth's comments but this issue is well beyond who will pay a little more than someone else. That can all be worked out. The issue here is that as a homeowners group they cannot get equal assessments unless they are voluntary. This needs to be a public right-of-way before they can do an RSID. If the RSID is for some reason unsuccessful and they try it again next year, they would have to come back again with this petition. He asked the Board to consider creating the public right-of-way now. In the event of the RSID failing they could try again but would not have to go through this part of the process again.

Horace Brown stated if the Commissioners do accept the right-of-way that will become a public road. It would be necessary to add that in order for it to be maintained by the County, it would have to meet County standards. He did not have a problem with accepting the County right-of-way, but he wanted it understood the road would not be maintained.

Chair Kennedy stated the Board would look at that. He reminded everyone the Road Department currently has inadequate funding to take care of the road they have, let alone adding new roads. There is a provision in State law about operation and maintenance, repair and replacement of those roads. There is perhaps a way to do this that may work. In response to Mr. Kurth, the law also defines how RSID's should be assessed. There are four methods allowed in State law and a combination of those would be a fifth method. It is up to the Board to decide how to equitably distribute the cost, which is part of the process.

Consideration: Houle Creek Subdivision for Lease or Rent (Frenchtown)

Laval Means, Office of Planning and Grants, presented the staff report.

This is a consideration of Houle Creek Subdivision for Lease or Rent. The applicant, Timothy Wall, is requesting approval to add 1 dwelling unit to a 3.6 acre property where 1 dwelling unit already exists. The property is located 1-1/2 miles north and 2 miles west of Frenchtown. It is unzoned and Comprehensive Plan designated as one dwelling units per 10 acres. It is also inside a wildland/residential interface area. There are no significant impacts to natural resources according to the Inventory for Conservation Resources. It can be found in substantial compliance with the Comprehensive Plan based on mitigations and comparable small sites within one mile of the parcel.

The property is accessed via Houle Creek Road which is on a County right-of-way up to the north end of Section 20, after which it becomes a public road on Forest Service right-of-way in this section. A portion of the road is on site and wholly contained in this parcel. It is not paved and it is between 17 feet and 21 feet wide, directly adjacent to this site.

Three variances are proposed, each regarding Houle Creek Road. The first variance is to not pave Houle Creek Road, the second variance is to vary from a 24 foot road width to the existing condition of a 17 foot to 21 foot road width, and the third is to not provide walkways. Staff is recommending approval of all three variances.

Based on discussions at the Planning Status meeting, there is a proposed additional condition. That condition, Condition 5, would require the landowner to waive the right to protest a future RSID/SID for improvements to Houle Creek Road, based on benefit.

There are two existing driveways on the property, one that serves the existing house and one that would serve the new homesite. The one that serves the new homesite does not meet the wildland/residential interface standard. Condition 4 would require a development covenant to be filed for improvements to the existing driveway and providing a defensible space around the new homesite. The other three conditions address provision of water for firefighting services.

Staff recommends approval of all three variance requests and approval of the lease or rent subject to the four conditions in the staff report. Condition 5 may be added at the discretion of the Commissioners.

Tim Wall, the applicant, stated he was disabled seven years ago and he is trying to increase his income.

Chair Kennedy asked for public comment. There was none.

Commissioner Evans asked Mr. Wall if he was aware of Condition 5, a waiver of the right to protest an RSID for future improvements to Houle Creek Road?

Tim Wall stated he read the condition and did not agree with it all. He could not see why he would give up any of his rights. If there were an increase in an SID, it would cost him and he would not be allowed to protest. He is on a fixed income. He has to watch every nickel he spends and he felt he should be able to protest anybody that wants to do that.

Commissioner Evans stated she understood what he was saying but he needed to understand the situation with Houle Creek Road. She has had complaints for the past 20 years about the dust there. The Commissioners have been threatened with lawsuits because of the dust. She believed that anyone who uses Houle Creek Road to get to their residence, should contribute to paving should an RSID ever be established. The critical point in this condition was the "based on benefit" wording. Those few words are some protection for him.

Tim Wall stated he had only one vehicle that used the road.

Commissioner Evans stated the new dwelling would generate additional trips.

Tim Wall stated most of his neighbors have high school children and multiple vehicles.

Commissioner Evans stated that is why the condition includes "based on benefit."

Tim Wall stated he could not see giving up a right.

Commissioner Evans stated Mr. Wall needs to decide whether he wants this subdivision enough to agree to this condition.

Tim Wall stated he did not think it would be to his benefit to give up any kind of rights.

Commissioner Evans stated she would not support approval of this subdivision without this condition.

Tim Wall stated then it looked like this will not work.

Chair Kennedy asked if Mr. Wall wanted to withdraw his request or have the Commissioners make a decision. The Board will probably approve the subdivision conditioned upon acceptance of the waiver of the right to protest.

Tim Wall stated at this point he did not think he would like to give up his rights.

Chair Kennedy asked if Mr. Wall wanted to withdraw his request?

Commissioner Evans asked to hear from counsel before Mr. Wall made his decision.

Colleen Dowdall stated it would be to everyone's benefit for the Board to act on the subdivision. Mr. Wall did not have to follow through on it if he did not want to give up his right, he would just not be able to build the house. He would not get his septic system permit. The subdivision will be approved but be based on his willingness to waive his right to protest an RSID. If he withdrew now and then changed his mind, it would create the position of having to come back and do this process again.

Commissioner Evans stated there might not be an RSID for 20 years, there may never be one, but if there is, he would need to participate.

Commissioner Evans moved that the Board of County Commissioners approve the Houle Creek Subdivision for Lease or Rent, with approval of all the variances and the addition of Condition 5, based on the findings of fact and conclusions of law. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Houle Creek Subdivision for Lease or Rent Conditions of Approval:

1. The lot owner shall file a document of record prior to final plan filing waiving the right to protest participation in a future RSID/SID for public sewer and water systems, based on benefit. The lot owner shall connect to public sewer or water within 180 days of when the public sewer or water main is available to the subdivision. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land depicted herein. *Subdivision Regulations Article 3-7(2), and staff recommendation.*
2. The developer shall contribute a \$100.00 water fee to the Frenchtown Rural Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants prior to plan filing. *Subdivision Regulations Article 3-7(1) Fire District recommendation.*
3. The Frenchtown Rural Fire District shall approve provision of water for firefighting purposes prior to plan filing. *Subdivision Regulations Article 3-7(1).*
4. A development covenant shall be filed, subject to OPG, fire district and County Attorney approval, to include the following items related to providing fire department access, and addressing wildland/residential interface standards:

Fire mitigation:

- A. Turnaround for fire apparatus shall be provided for the new home site, as shown on the site plan. *Missoula County Subdivision Regulations Article 3-2(6)(E) and staff recommendation.*
- B. The driveway driving surface to the proposed home site shall be a minimum of 12 feet in width with a minimum unobstructed width of 20 feet wide and 13 feet 6 inches high. *Missoula County Subdivision Regulations Articles 3-2(3)(C), 3-2(6)(A), 3-2(6)(E), fire district and staff recommendation.*
- C. The property owner shall create a defensible space for fire protection purposes as approved by the appropriate fire jurisdiction. Vegetation shall be removed and reduced around each building according to the slope. Single ornamental trees or shrubs need not be removed as long as all vegetation near them is reduced according to the guidelines established by the fire jurisdiction. Ornamental trees and shrubs should not touch any buildings. When planting the property owner shall select trees, shrubs, and vegetation from native vegetation stock when possible that limit or retard fire spread as suggested below:
 - i. Perennial: Choose hardy perennial flowers that are adapted to the climate of the area. These green, leafy, succulent plants are difficult to burn. Watering and regular weeding improves fire resistance.
 - ii. Shrubs: Evergreen shrubs such as dwarf conifers or junipers tend to ignite easily: avoid them unless well spaced.
 - iii. Trees: Deciduous trees can be clumped, scattered, or planted in greenbelts or windbreak patterns. Evergreen trees tend to ignite easily and should be spaced accordingly.

See Missoula County Subdivision Regulations vegetation reduction guidelines and use applicable slope for required standards. *Missoula County Subdivision Regulations Article 5-1(5)(H), Missoula County Subdivision Regulations Appendix VII, fire district, and staff recommendation.*

- D. Only Class A or B fire-rated roofing materials shall be used for any new construction. *Missoula County Subdivision Regulations Article 5-1(5)(H) and staff recommendation.*
5. The lot owner shall file a document of record prior to final plan filing waiving the right to protest a future RSID/SID for improvements to Houle Creek Road, based on benefits. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land. *Subdivision Regulations Article 3-2.*

Consideration: Shipp Addition (5 lots on 390 acres) – Between Nine Mile and Alberton along Highway 10

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

The applicants for the Shipp Addition, Flayton Glen Shipp and Crystal Queenette Shipp, represented by Territorial Engineering, are requesting approval to split a 390 acre parcel into 5 lots ranging in size from 2.67 to 4.34 acres and to create a 373 acre remainder. This property is located along old Highway 10 between Nine Mile and Alberton. The parent parcel extends west across Highway 10 and east across the Clark Fork River to Interstate 90.

The upper portion of the lotted area is relatively level and there is a steep bank that drops about 30 feet to a terrace above the Clark Fork River. A bank drops below this terrace to the river's edge. The remainder of the parcel includes steep timbered hillsides to the west and river, riparian and floodplain areas to the east.

The property is unzoned and the 1975 Comprehensive Plan designates open and resource land use with a density of one dwelling unit per 40 acres. The proposed subdivision totals 16.75 acres and the applicants have proposed a development agreement that would preclude further development on 183 acres of the remainder, thereby meeting the density recommendations of the Comprehensive Plan. Condition 1 requires the development agreement be finalized prior to plat filing.

The property is accessed by old Highway 10, which is located within the old 60 foot Mullan Road right-of-way. Highway 10 is paved to a 26 foot width and maintained by the Montana Department of Transportation. The applicants propose individual driveways to serve each lot. There are no walkways or pedestrian facilities in the area near the subdivision. Condition 4 requires an RSID waiver for walkways along Highway 10. The applicant has proposed a private trail easement along the river. Right now it is shown right along the river's edge. Staff has recommended as a condition of approval that it be moved slightly upbank to provide a more usable walkway.

The lots are located between the road and the river and driveways will not cross through a timbered area. However, Scott Waldron of Frenchtown Rural Fire said that the lots may not technically be within a wildland/residential interface, but he would still recommend non-combustible roofs and setbacks from any timbered slopes that might be downslope from the property. Condition 8 requires that covenants recommend that lot owners consult with Frenchtown Rural Fire prior to home construction.

There have been documents previously filed granting easements to an adjacent property owner to install, maintain, repair and replace a septic system and a drainfield and a well and a water line. The adjacent property owners have expressed some concerns about the details of this easement agreement. There have been significant discussions with the applicants, the owners, the neighbors, the applicant's representative and the County Attorney's Office about the details of this agreement. There isn't any easement shown on the plat although it is referenced. Condition 11 requires that the plat specify more clearly the location and extent of the septic and well easement for the property to the east.

One of the routes being considered for the Yellowstone Pipeline Project (YPL) runs along Highway 10 adjacent to the proposed lots. Condition 10 requires that lot owners be notified about the YPL Project.

In terms of natural resources and floodplain issues, Condition 2 requires that floodplain areas and slopes steeper than 25% be shown as no build zones on the plat. The proposed lot lines had not been flagged at the time of OPG's site visit. There appears to be some dense riparian vegetation located on the banks below portion of Lots 1 and 2 that included an overstory of pine, cottonwood and aspen trees, with some willows closer to the river. The surveyor stated that based on his review of the site, he did not think there were any areas with trees on the slopes below the lots. Part of the condition related to the riparian areas will require that be more clearly delineated once the lot lines are marked out.

Other portions of the terrace and the banks are either grassy or infested with knapweed. There is a significant amount of knapweed on the property. The larger remainder portion includes quite a bit of riparian habitat in areas along and across the river. The covenants do include a riparian management plan and staff has made several recommendations in Condition 7 that relate to showing the boundary of the riparian area, a description of the existing vegetation and more detail about permitted and prohibited uses.

The area provides a variety of wildlife habitat. A neighbor reported seeing a mountain lion on the property in August. It would also be expected to provide habitat for deer and black bear. An osprey nest was seen across Highway 10 from the lots during the site visit. Various Inventory Resources indicate that the overall property includes elk, white tail deer and mule deer winter range. Proposed covenants include some measures to reduce potential for human/wildlife conflicts. Condition 8 requires those be amended to include more specific recommendations about fencing, compost piles and apiaries.

There is a knapweed infestation on the lots and there is a condition that requires a revegetation plan for disturbed sites be approved prior to plat filing.

There is one variance request for the 3 to 1 depth to width ratio that would apply to Lots 2 and 3. Staff is recommending approval of the variance request, as well as approval of the subdivision, subject to the 12 conditions as noted in the staff report.

Tim Wolfe, Territorial Engineering and Surveying, stated he and Nancy Heil spent a lot of time on this proposal. He had no problem with the conditions as written. The adjacent property owners, the Blocks, were present and would like to speak today.

Chair Kennedy stated the proposal calls for individual driveways off Highway 10, which is only 26 feet wide. He asked Horace Brown if that was satisfactory to him or would he prefer combined driveways?

Horace Brown stated this part of Highway 10 was State maintained, not County maintained. The State would make that decision.

Chair Kennedy asked if Horace Brown had any information about access?

Horace Brown stated there are existing approaches there but they would have to apply for new ones as this is a change in use.

Chair Kennedy stated that if this was approved, it would not circumvent the requirements of the State Highway Department.

Tim Wolfe stated he understood that and had received that comment from the Highway Department, that any new driveways would be looked at individually and a new permit would have to be issued.

Chair Kennedy asked for public comment.

Randy Block: Good afternoon, my name is Randy Block and I appreciate the chance to present some of our concerns. We own the property east and north as you probably already have heard. The property line there is real close to a house that we already have built there because on the out of the floodplain. We own 3 and half acres approximately. Out of the floodplain that we got from, we bought from Mr. Shipp in 1995 before anything was come up with Ron Haines, he was the

underwriter, because he was losing at the time that we bought it and we supposedly bailed him out financially. Anyway, I believe we own approximately maybe a quarter of an acre, I'm guessing, but it just enough to have a house on it. There wasn't enough room for a well or septic so we got this supposedly an easement that was drawn up in the buy/sell agreement. At the time, this deal was a rush deal because he had to have the money within a week. At the time when we surveyed it there wasn't the 8 acres which we bought, supposedly, it was 3-1/2. There was concern on our part whether we even wanted to purchase it at that time. Mr. Shipp at that time stated to our realtor and to his realtor that because of that problem, we had a couple horses and we couldn't put them on a floodplain, that he would be more than happy to sell us 6 acres instead of that 8, so we have more land up above. So at that time, taking him for his word, we went on ahead and closed on the piece of property under the understanding that we were going to have a boundary exchange with him, a little bit on the river for a lot more on top, it had to be that way to get our 6 acres. At that time we didn't need an easement so we went ahead and processed the whole thing. Then what we did is we had it surveyed. With two of his realtor we went out and drew approximately, we didn't know what it was, but it wasn't 6 acres and we were happy with it, we weren't, we didn't really need 6 acres, we needed just the partial land up there to keep our couple horses. We had that surveyed out and I have the survey map here and it's all drawn up, certificate of survey, with the boundary exchanges on it. And we also did one for the people on the other side, our neighbors, we did all this survey together and boundary exchanges. So, the survey was all done and it come time to sign it, our neighbor signed it, we signed it and sent it to Mr. Shipp and he would not sign it. So there we're out the land plus an easement. So we pursued an easement with him and we couldn't get it through him, so we had to go to the lawyer. Through a lawyer and a few thousand dollars and some time we finally purchased this easement, which is recorded. I'm sure you're familiar, recorded at the Courthouse. And the easement is drawn up an agreement between him and us, up to 450 feet, which seems to be a problem now with these lots, because it takes in the first two lots. My lawyer told me, or us, at that time that even though that we had witnesses for the 6 acres that doesn't stand up in court, only what's written down. And that's what we're holding to now. That would, like I say, cover the first two lots and even part of the third one, just the tip and that one is in the floodplain so it really doesn't make a difference. So that is a big concern to us. And yes, it's a sizeable amount there, 450 feet, but who knows what's going to happen in 200 years to our heirs and whatever. We'd certainly like to protect that. We do have some other concerns because the whole front yard in front of our house is virtually his, that lot that goes to the point, Lot 1, that goes to the point there, goes down to 8 inches there and then it divides out to the road. So our whole front yard is virtually his. Our drainfield and our septic system and his drainfield is there. I have some concerns if this lot is sold to whomever, they can have animals there. There can have forage animals the way I understand it. Is that correct? Which constitutes a pig, horse, cattle, whatever. I really have a concern that being on the drainfield and septic system. Even to the point of what happens if they should break a leg, who is liable, because it is our system. I don't know these things. They could not want us to mow our front yard, which would be devastating to our house and the value of it. There's a tree there, there's all kinds of concerns there because our whole front yard is there. We would sure like to straighten this, the easement out so it would benefit all the parties here. We would like to have him grant us a boundary exchange, a piece of property that would cover, that we could protect our well and our sewer. They have proposed acre for acre boundary exchange which we don't really think is fair. After all, land in the Frenchtown area is going for approximately maybe \$10,000 an acre. You can see that this is certainly more than \$10,000 an acre here, the subdivision here. Why is it more? It's because of the river. Now, even though he owns 400 acres approximately, he wants to take acre for acre the land worth the most, down by the river, and trade straight across. We don't think that's quite fair. I think there's some misconception on Mr. Haines part, as an underwriter. He believes that he was the lienholder when we bought this property which is not true. We had bought this property and closed on it a year before he even got involved with it and even knew Mr. Shipp. There's some concerns at the time when we were getting this easement what would happen, when we talking to our lawyer, he wanted to secure this easement for us. And so he got signed from all the mortgage holders, their permission to grant this easement, which he did. And it stated and I have a copy of the whole thing and I'm sure you people do to. One more concern we have is on Lot 2, the sewer system is, the septic perk test is right in a ravine and I know it's low and there's water there from time to time in the spring of the year. I've seen it my short 4 years that we've been out there. Another real big concern with us is the elk, they always come down in the field there and I was wondering that maybe if they could grant some kind of a range there for the deer and the elk, because that's exactly where they go down. But the underlying concern here for us is we're not against the subdivision. We would like to be made whole through this thing as far as protecting our interest in it. And if we don't, aren't protected in some way, our place is really going to be devastated in terms, it's hard to visualize because you almost have to be there and realize where that boundary is, because it goes from one foot, or, from the edge of our house, it angles right in front and down to 8 inches which is about approximately 70 feet from the front of our house so it goes right across our property. It's kind of the thing in short, the short version. If there's any questions, we'd sure, are willing to, we have all kinds of lawyer papers and everything concerning the easement and what it means if anybody would like to read down, because he really wanted to make sure that it was secured just in case of somebody, of even him, Mr. Shipp, losing this land and them taking over. So, that's all I have.

There were no further public comments.

Commissioner Evans stated this situation was really distressing. She understood that Mr. Block wanted very much to clear this matter up so he was secure. She assumed Mr. Shipp wanted to clear it up so he had an approved subdivision. Mr. Shipp has made an offer that Mr. Block doesn't not find satisfactory. Mr. Shipp wants to do a subdivision that Mr. Block does not find satisfactory. She did not know what to do. She could, on one hand, not approve the subdivision until they both get it all fixed. And they could say great. Or, they could approve the subdivision minus two lots, which may not be legal. She did not want Mr. Block in a position where he could prevent Mr. Shipp from doing his subdivision. She did not want Mr. Shipp getting approval of the subdivision that keeps him from settling with Mr. Block. She did not know what to do.

Randy Block: I believe that we could settle this and it would not take, monetarily-wise, it would not take anything away from Mr. Shipp or Rod Haines, they would not lose a penny on it. And we've already tried to make that offer and they, he wants to evidently come ahead on this by acre for acre. What is worth the most, it's along the river. So, we can solve this, we can solve this in a matter of 5 minutes.

Commissioner Evans stated a good description of compromise is "the equal distribution of dissatisfaction." Compromise does not make either side really happy. She asked for counsel's advice on whether or not it would make sense to postpone action on this subdivision for perhaps a month, during which time Mr. Block and Mr. Shipp work together to reach an agreement. She did not want to give one the upper hand over the other.

Commissioner Carey asked what Mr. Block's idea was to settle this?

Randy Block: (Explaining the area at the plat map) - This is my well here on the easement and this is the sewer system, that's off a little bit, our sewer system is actually this way a little bit, more toward the driveway. We went as far as we could and we went over as far as we could so we wouldn't infringe on Mr. Shipp's property to begin with, because, even though he is a hard man to deal with and you can't deal with him, I still don't believe in going to the "nth" degree. So anyway, we would, it would be very satisfactory to us to go over 30 foot from our well and go out to the driveway right from there. This lot would still be bigger than the rest. That lot would still be priced the same amount of dollars, it would not take anything away from him. We would even be willing to give 50 foot or thereabouts on the river.

Commissioner Carey asked what Mr. Shipp would get in return?

Randy Block: He would get 50 foot along the river.

Commissioner Carey asked if Mr. Block would still have the 450 foot easement.

Randy Block stated they would give that up.

Chair Kennedy stated Mr. Block would give the easement up for real property and Mr. Block would give Mr. Shipp two things, the easement and real property in exchange.

Randy Block stated he realized the piece of property, the 50 foot on the river, isn't much, but the easement is worth a lot.

Tim Wolfe stated he could take the proposal to Mr. Shipp. He hoped a condition could be come up with to settle this between Mr. Shipp and Mr. Block and still proceed with the subdivision.

Commissioner Carey asked Tim Wolfe for his opinion on whether or not this seemed reasonable?

Tim Wolfe stated he was not a realtor and did not have an opinion.

Colleen Dowdall stated there is a proposed condition that requires that there be some agreement as to what the easement is and that is be shown on the plat, because easements are required to be shown on a plat. This easement is not easily drawn without an agreement between the parties. She would prefer the Commissioners approve the subdivision contingent upon something the County has control over. They were not in a position to interpret the easement or decide what it really means. They do need to have the parties agree to what the easement is, it is between them, but it needs to be shown on the face of the plat.

Commissioner Evans stated she understood Colleen Dowdall's comments but unless there is a reason for these two parties to come to a conclusion, and the reason is Mr. Shipp wants his subdivision, he will be more inclined to work with Mr. Block to come to a conclusion. Mr. Block wants his property settled. She would not vote on the matter today, regardless of whether anybody else is willing to or not. She wanted to postpone the decision for one month at which time the two parties will have reached a conclusion.

Colleen Dowdall asked if Commissioner Evans would consider a lesser amount of time?

Commissioner Evans stated she would, she was just trying to give the parties an adequate amount of time. She would be willing to postpone two weeks.

Chair Kennedy wanted to know what the incentive was to wait. Neither of the parties have anything until the issue is resolved. He did not know what the incentive was to wait.

Commissioner Evans stated the incentive was that Mr. Shipp would not be sure it would be passed, therefore he would be more inclined to be reasonable and flexible and Mr. Block is afraid it is going to be passed, so he would be reasonable and flexible.

Chair Kennedy asked which condition pertained to the easement?

Nancy Heil stated it was Condition 11 and it states they would not be able to file the plat until that condition is met.

Commissioner Evans stated that puts Mr. Block in the driver's seat instead of an equal distribution of dissatisfaction.

Chair Kennedy stated he was inclined to proceed, he did not see the advantage in not proceeding.

Commissioner Carey wanted to know why Commissioner Evans felt approval put Mr. Block in the driver's seat?

Commissioner Evans stated that Mr. Block could say he would not settle and therefore Mr. Shipp could not file his plat. If neither are in a superior position, they would both be more flexible. Both have a reason to come to a conclusion.

Michael Sehestedt stated he was not sure the relative bargaining power is changed by approving the subdivision or not. The key is they will either come to an agreement between themselves or a District Court Judge will tell them who the winner is. The County can't impose a solution on either party. He felt the relative bargaining position would not change if there is approval conditioned on resolving the issue, or resolving the issue prior to approval. It did not really affect the balance of power between them.

Colleen Dowdall stated the part there is control over is the requirement that the extent of the easement be shown on the plat. That requires either their agreement or an interpretation of what the easement actually is. There are two documents she has read which can be read in different ways, to the advantage of either party. In one way, the easement extends into the third lot and the other way, the Block's have their front yard on the other lot. The Block's have some incentive to

come to an agreement. The interpretation is somewhere in the middle but she felt the Block's probably have the most to lose in terms of not getting it resolved.

Commissioner Carey asked why Colleen Dowdall did not want the Commissioners to wait a month?

Colleen Dowdall stated she was under the impression that Mr. Shipp had some financial concerns that this be resolved more quickly than that.

Commissioner Evans stated she was willing to delay a week or two weeks. It seemed to her that Mr. Shipp had the most to gain if they say no because he will get his 450 foot easement taken away, he won't have to worry about that any more. Mr. Block will then have his property satisfied so he knows this will not be on his front yard. If they can come to some conclusion, and delaying action will give them some incentive to come to a conclusion they will both benefit from. If Mr. Shipp is granted his subdivision, he has a long time to keep the Blocks worrying as to whether or not the easement will be settled. He could hold off on filing his plat.

Commissioner Carey stated if the wait is two weeks, it gives something to Mr. Shipp, and if it is approved, subject to Condition 11, it may give something to Mr. Block. Counsel does not feel it would swing one way or the other. He was willing to act on the matter today. On Condition 8, it recommended lot owners consult with Frenchtown Rural Fire. He wondered if that could be changed so lot owners shall consult with Frenchtown Rural Fire. There may be some prospective lot owners who would not have any idea about the vegetation issues. If it is only recommended, they may not do it.

Colleen Dowdall stated the reason "shall" was not included was there was a gray area as to whether this is a wildland/residential interface area. There are some man-made and natural fire breaks but they wanted the warning in the covenants that this is a place where wildfires could occur and they should talk to the Frenchtown Rural Fire District.

Commissioner Carey asked if adding "shall" would be stretching things a bit?

Chair Kennedy stated Commissioner Carey could add the word "shall" in his motion. He did not know if it created any particular problem.

Colleen Dowdall stated Commissioner Carey would be making the finding that this is a place that requires that kind of mandatory language. She did not have a problem with that.

Commissioner Carey was willing to make that change and even then, the lot owner was only consulting, it was not being mandated they had to do anything Rural Fire said.

Colleen Dowdall stated this would be in the covenants and would require they consult with Frenchtown Rural Fire.

Commissioner Carey moved that the Board of County Commissioners amend Condition 8 to read: "The proposed covenants shall be amended that lot owners shall consult with Frenchtown Rural Fire District prior to home construction..." Chair Kennedy seconded the motion. The motion carried on a vote of 2-0 (Commissioner Evans abstained).

Commissioner Carey moved that the Board of County Commissioners amend Condition 11 to read: "The plat shall clearly specify the location and extent of the septic and well easement for adjacent property to the east..." Chair Kennedy seconded the motion. The motion carried on a vote of 2-0 (Commissioner Evans abstained).

Randy Block asked if that specified that Mr. Shipp had to get together with him at all?

Commissioner Carey stated his understanding was the two parties had to work this out.

Commissioner Evans felt Mr. Block was saying that Mr. Shipp could delineate on the plat where the easement is without ever talking to Mr. Block.

Chair Kennedy stated he did not think so, there is such ambiguity in the easement, it can't be unilaterally be done by one of the parties.

Colleen Dowdall stated it was also subject to County Attorney and County Surveyor approval. She would want both parties to come to her office with an agreement because it could be interpreted many different ways, or with a court order.

Michael Sehestedt stated the alternative to an agreement would be a judicial determination. This is the interpretation, it is subject to County Surveyor and County Attorney office approval. The Attorneys office would not approve something that is not either signed off on by both parties or signed off by someone with judicial authority.

Colleen Dowdall reminded the Commissioners that when an adjoining landowner has been successful in delaying a plat, the applicant requested the condition be revised to accommodate filing the plat and not let the landowner hold up the process. They still have jurisdiction over the subdivision.

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

Commissioner Carey moved that the Board of County Commissioners approve the Shipp Addition Summary Subdivision, based on the findings of fact in the staff report and subject to the amended conditions in the staff report. Chair Kennedy seconded the motion. The motion carried on a vote of 2-1 (Commissioner Evans opposed based on the reasons she stated).

Shipp Addition Summary Subdivision Conditions of Approval

1. The development agreement regarding future development on the remainder shall be reviewed and approved by OPG and the County Attorney's Office prior to plat filing. The agreement shall be revised to clearly reflect compliance with the density recommendation of the comprehensive plan. *Subdivision Regulations Article 3-1(1)(C) and County Attorney recommendation.*
2. The plat shall label adjacent property within the same ownership as remainder. The plat shall include the floodplain boundaries. The plat shall show slopes greater than 25% and areas within floodplain and riparian areas as no-build zones. *Subdivision Regulations Article 3-1(2), 5-2(3)(T).*
3. Drainage plans for the site shall be approved by the County Surveyor's Office prior to plat filing. *Subdivision Regulations Article 3-4.*
4. The following statement shall appear on the face of the plat and in each instrument of conveyance:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID installation of pedestrian walkways along Highway 10, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land." *Subdivision Regulations 3-2(5) and staff recommendation.*
5. The following statement shall appear on the face of the plat and in each instrument of conveyance:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for public water systems, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land." *Subdivision Regulations Article 3-7(2).*
6. The lot owner shall contribute \$100.00 per new lot to the Frenchtown Rural Fire Department prior to plat filing. *Subdivision Regulations Article 3-7(1) and Frenchtown Rural Fire Department recommendation.*
7. The Riparian Management Plan shall be amended to include an attachment showing the boundaries of the riparian resource area; a description of the existing riparian vegetation; and a description of the functions of riparian areas. The Plan shall include more detail about permitted and prohibited uses, including site specific existing and proposed hay and livestock uses; existing and proposed pedestrian access and use; and vehicular use. The Plan shall be reviewed and approved by OPG prior to plat filing. *Subdivision Regulations Article 3-13 and staff recommendation.*
8. The proposed covenants shall be amended that lot owners shall consult with Frenchtown Rural Fire District prior to home construction. The covenants shall be amended to address barbecue pits, garden fences, compost piles, and apiaries. The covenants shall be amended to include implementation of the Revegetation Plan for Disturbed Sites. Revised sections of covenants related to driveways, fire, wildlife, and weeds shall be approved by the County Attorney's Office and OPG prior to plat filing. *Subdivision Regulations Article 3-1(1)(B), 3-1(2), 4-1(12) and staff recommendation.*
9. A Revegetation Plan for Disturbed Sites shall be approved by the Missoula County Weed Board prior to plat filing. *Subdivision Regulations Article 3-1(1)(B).*
10. The developer shall provide notice to purchasers of the proposed location of the preferred route of the Yellowstone Pipeline. The nature of that notice is subject to approval by the County Attorney's Office prior to plat filing. *Subdivision Regulations Article 3-1(2) and staff recommendation*
11. The plat shall clearly specify the location and extent of the septic and well easement for adjacent property to the east, subject to County Surveyor and County Attorney Office approval. *Subdivision Regulations Article 5-1(4)(J) and County Attorney recommendation.*
12. The private trail easement shall be moved to the top of the lowest slope in a location to be approved by OPG prior to plat filing. *Subdivision Regulations Article 3-2(5) and staff recommendation.*

Continuation of Hearing and Decision: Petition to Create Missoula County Sewer and Water District (Target Range Area) – Continued from August 11, 1999

Chair Kennedy stated the decision on this matter will be continued until next week, September 8, 1999. He then reopened the public hearing. There being no comments, the hearing was continued to next Wednesday, September 8, 1999.

There being no further business to come before the Board, the Commissioners were in recess at 2:40 p.m.

THURSDAY, SEPTEMBER 2, 1999

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

Claims List – The Commissioners signed the Claims List, dated September 1, 1999, batch numbers 128, 130, 131, 132, 133, 136, 137 and 140, with a grand total of \$149,542.75. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Memorandums of Agreement – The Commissioners signed four Memorandums of Agreement:

1. with the Missoula Public Library to develop a parenting collection of books, videos and other materials to support parenting activities for the Strengthening Families Project. Value of the Agreement is \$1,000.00, and is contingent upon receipt of Montana Department of Public Health and Human Services grant funds by Missoula County. Duration of the Agreement is July 1, 1999 through June 30, 2000.
2. with the Missoula Food Bank, to provide basic needs assistance for indigent residents of Missoula County. Value of the Agreement is \$20,500.00. Duration of the Agreement is July 1, 1999 through June 30, 2000.
3. with Community Care, Inc. to provide alcohol and other substance abuse prevention services for youth in Missoula County. Value of the Agreement is \$12,000.00. Duration of the Agreement is July 1, 1999 through June 30, 2000.
4. with CASA (Court Appointed Special Advocates) of Missoula, Inc. to provide volunteers appointed by a district judge to provide advocacy services for children aged birth to 18 who are neglected, abused, or abandoned. Value of the Agreement is \$10,000.00. Duration of the Agreement is July 1, 1999 through June 30, 2000.

Quitclaim Deed – The Commissioners signed a Quitclaim Deed conveying to Cindy Mae Bex the premises described as Lows – Lot 1 and 2, Frac. of 3, Block 16, SUID #1064800, to cancel a tax deed recorded in Book 594 micro records page 1283. The Deed was returned to the Clerk and Recorder's Office for further handling.

Resolution – The Commissioners signed Resolution No. 99-059, a resolution establishing the amount to be assessed to RSIDs for administration costs to maintain the RSIDs. The amount is limited to five percent of the total annual assessment, or \$500.00, whichever is less.

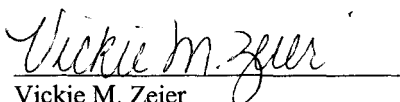
Purchase and Maintenance Agreement – The Commissioners signed a Purchase and Maintenance Agreement and a Dropship Addendum with Williams Communications Solutions, LLC to provide telecommunications equipment for the Missoula County Detention Center. Total price is \$34,667.34. One original was filed with the Clerk and Recorder, and one was returned to Bob Schieder at the Detention Center.

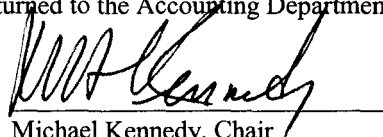
The minutes of the Administrative Meeting are on file in the Commissioners Office.

FRIDAY, SEPTEMBER 3, 1999

The Board of County Commissioners did not meet in regular session; Commissioner Evans was out of the office all day, and Commissioner Carey accompanied County Risk Manager, Hal Luttschwager, to Condon to visit several sites affiliated with Missoula County.

Claims List -- Commissioners Kennedy and Carey signed the Claims List, dated September 2, 1999, batch number 144, with a grand total of \$3,634.00. The Claims List was returned to the Accounting Department.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, SEPTEMBER 6, 1999

The Courthouse was closed for the Labor Day holiday.

TUESDAY, SEPTEMBER 7, 1999

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

In the forenoon, Commissioner Bill Carey accompanied County Surveyor Horace Brown on a site inspection of Snowdrift Lane regarding a petition to establish it as a County Road.

Monthly Report – Chair Kennedy signed the Monthly Reconciliation Report for Justice Court 2, Karen Orzech, for the month of August, 1999, and the Report of the Clerk of the District Court, Kathleen Breuer, for the month of August, 1999.

ADMINISTRATIVE MEETING

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

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with the Missoula City-County Health Department to provide neighborhood nurse home visiting services for parents of 0-3 year olds (and their children) who are at risk of child abuse or neglect. Value of the Agreement is \$62,360.00. Duration of the Agreement is July 1, 1999 through June 30, 2000. The Agreement was forwarded to the Health Department for signature and return.

Contract Modification – Chair Kennedy signed Modification No. 2 of an Agreement between the Missoula City-County Health Department and the Montana Department of Environmental Quality, adding Section I, 1e, and Section III, 1j. The Contract was returned to the Health Department for further handling.

Professional Services Contract – The Commissioners signed three Professional Services Contracts between the Missoula City-County Health Department and law enforcement agencies for participation in the DUI Enforcement

Team. Performance schedule is August 1, 1999 through June 30, 2000. Compensation for each agency shall be up to \$4,000.00. The participating agencies are:

1. the Missoula County Sheriff's Department
2. the Missoula Police Department
3. the Montana Highway Patrol

The Contracts were returned to the Health Department for further handling.

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

WEDNESDAY, SEPTEMBER 8, 1999

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

Claims List – The Commissioners signed the Claims List, dated September 7, 1999, batch numbers 146,148, 150, 151, 152 and 154, with a grand total of \$136,884.99. The Claims List was returned to the Accounting Department.

Plat and Subdivision Agreement – The Commissioners signed the plat and subdivision improvements agreement for Mountain Sheep Vista, a rural residential subdivision located in the SW1/4 of Section 16, T13N R18W, PMM, Missoula County, a total area of 7.67 acres, with the owners of record being Industrial Acres, Inc. \$4,777.78 was accepted by the County in lieu of park land dedication.

PUBLIC MEETING – September 8, 1999

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

Public Comment

None

Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$290,061.74. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Hearing: Missoula HOME Applications

Opportunity Resources, Inc. (ORI) is proposing to build a duplex that will provide housing (a total of eight bedrooms) for severely disabled individuals. The new units will relieve over-crowded conditions for current clients.

Human Resource Council (HRC) is proposing to continue its successful three-county housing rehabilitation loan program for low- and moderate-income homeowners. This program was originally funded by the HOME Program in 1996.

homeWORD is proposing to renovate the former Lennox Hotel into 10 low-income residential units for teen parents, elderly adults on limited fixed incomes and single survivors of domestic abuse.

The actions requested by the Board of County Commissioners are to:

1. Allow three non-profit organizations to present information concerning the HOME Program and the projects they are proposing to submit to the HOME Program for funding.
2. Conduct a public hearing to receive public comment on the HOME Program and any or all of the proposed projects.
3. Approve Missoula County submitting an application on behalf of Opportunity Resources, Inc.
4. Approve granting CDBG Program Income Funds of \$10,000 to each Opportunity Resources, Inc. and the Human Resource Council, contingent upon HOME Program funds being awarded.

Mike Barton stated that HOME is an investment partnership program that provides housing opportunities to low and very low income individuals. It works with local government to provide public housing. It allows local providers to buy, build or rehabilitate housing for direct assistance to low income individuals. They are in their 8th year. Last year there was approximately \$3.5 million nationwide to assist these individuals. Each of the programs can request up to \$400,000 this year for their various projects, with a total of approximately \$4.2 million available. The filing deadline for this funding is October 4, 1999.

Sara Spoonheim from homeWORD stated that they are proposing to renovate the former Lennox Hotel into 10 low-income residential units for teen parents, elderly adults on limited fixed incomes and single survivors of domestic abuse. The units will all be for families below 50% of the median income in Missoula, all studio and 1-bedroom units. They are also applying for a HOME grant which would be used to reduce rents further. The first floor of the building will be reserved for commercial space which will rent at market rate and help subsidize the rents. They are hoping to meet the need for pregnant and parenting teens. Last year, they served 106 teen parents, a 25% increase over previous years. The vast majority were homeless or at risk of homelessness. They have also identified two other groups they hope to serve, single spouses leaving violent domestic situations and elderly adults on limited fixed incomes. She also wanted to hear from other groups present today about their needs. Currently the Lennox is not handicapped accessible. After renovation, one of the units will be fully accessible. An elevator and ramps will be installed and the other 9 units will be adaptable if necessary. She thanked the County for their assistance in making this project possible.

Jim Morton, representing Human Resource Council, stated there was a rehabilitation program they were applying for under the HOME grant. They originally applied for HOME funds in 1996 and were awarded \$363,000 for housing rehabilitation, co-sponsored by Missoula, Ravalli and Mineral Counties. Approximately 38 homes in the three counties

were rehabilitated with that money, with an average cost of approximately \$9,600. They have numerous applications they cannot fund so they are going back for another three county proposal. They have rehabbed homes ranging from new roofs, structural problems, handicapped access, overcrowding, a variety of situations. In addition to that loan fund, they have been granted funds from the US Department of Agriculture Rural Development. Those funds for housing rehab cannot be used inside the City of Missoula. The other project they are working with is for first time homebuyers in Ravalli County only. Within the City of Missoula, Human Resources, WORD and the Missoula Urban Demonstration Project are a part of a consortium of organizations working toward first time home ownership and rehab. This shows there is coordination and planning between many of the agencies in town.

Ken Brown with Opportunities Resources stated they would like the Commissioners support with a project they have been working on for some time. The conversion of a typical ranch house to a group home for handicapped individuals gets quite crowded and not very private. To try to solve this, some individuals were moved to apartments but that does not always work as these people need 24 hour support. Over the years, the idea of a duplex was formed. They have purchased property at 3rd and Howard to build such a duplex from the ground up, making it fully accessible. Each individual would have their own bedroom and a Community Room would be available for gatherings and meetings. The approximate budget for the duplex is \$420,000. They are asking for \$214,000 from the HOME project. They will also be asking the Montana Board of Housing for some additional funding. The land has already been purchased.

Commissioner Evans asked how much that left them short of their goal?

Mike Barton stated there were uncovered costs currently of about \$40,000, part of which ORI hopes to gain through fundraising efforts.

Chair Kennedy asked if the total cost of the application could exceed \$400,000?

Mike Barton stated each organization may apply for up to \$400,000.

Chair Kennedy asked why the request was limited on the 3rd and Howard project to \$214,000.

Mike Barton stated it was a regulatory limit based on the maximum allowable support for multi-family dwelling units of four bedrooms or more. It is a classification that has been overlaid by the state on these types of projects, so this application cannot exceed \$107,000 per unit.

Chair Kennedy asked if there was a weakness in the application because it does not show full funding?

Mike Barton stated they would show full funding by the October 4th deadline.

Commissioner Evans asked Cindy Wulfekuhle if there was enough money in the County's funding to give them the \$40,000?

Cindy Wulfekuhle stated there could be. There are a couple of options, one being fundraising. There has been some discussion of a low interest loan or some kind of second debt. They had settled on an amount of \$10,000 from the CDBG Program Income Funds but there is more money available if it is warranted. They are still working on their budget.

Mike Barton stated ORI has already been doing some fundraising and have used that money toward some costs associated with the development. ORI has purchased the site. There is additional land at the site that may be devoted to further development by ORI or for sale to fund further development in another location.

Commissioner Evans stated she would like to make sure there was enough support so this grant could be obtained. She was willing to allow up to \$40,000 to help with this project, in the form of a long-term loan or a grant.

Mike Barton stated Opportunity Resources appreciates that support, as did he.

Commissioner Carey asked if the state looked at whether the funding came from a variety of sources or just the County?

Mike Barton stated the state does look at community support. It is a concern of the state that in situations like this, where local government applies on behalf of a non-profit, that frequently local government does not participate financially in the application. Any sources of funding from the community, public or private, enhances the application.

Chair Kennedy stated there was a willingness to do that as well as other community support. He wanted this application to be as strong as possible. The Commissioners are committed to this project.

Chair Kennedy opened the public hearing, common to all three proposals.

Sheila Thompson from Opportunity Resources explained the process involved with this proposal. They came up with a plan to purchase this land and look at the current home and figure out what could be done better, to provide a living space that is more accessible and comfortable. The plan is for each individual to have his or her own bedroom. When a home is retrofitted to be accessible, it doesn't always have everything necessary. This new duplex will be built from the ground up and be fully accessible. A committee was formed with input from residents to design the plans with the architects. The architects chosen have previous experience with handicapped accessible homes.

Mark Stammel stated he was speaking for Lee McQuisten, who has difficulty with language. He read a statement from Mr. McQuisten: *"I need help getting into my own house because of a ramp. I live with six other people which gets very crowded, especially when you add two to four staff working along with them. We get into fights a lot. This new duplex would allow me to do more things for myself and it would be less crowded for me. Thank you."*

Brad Fernelius stated the reason he was here was that Opportunity Resources was building a house for them to meet their needs. It would have enough room on each side. It would be great for them. He shares a room right now and would like

more privacy. It would be good for all the residents. As Mr. McQuisten said, the home needs to be wheelchair accessible. This is a great location and great for the disabled person.

Brenden Moles from the Human Resource Council stated he was the manager of the housing loan program. He works with first time homebuyers and homeowner rehab. There were four individuals with him who would like to speak today.

Harriet Melton stated she has her own home. Her husband passed away three years ago. During the heavy snowstorm a few years ago, the roof on one side of her home collapsed. Her only income is Social Security, which isn't much, and she couldn't put a new roof on the house. She contacted Brenden and he was able to arrange a loan for the new roof and widening of some interior doorways so her wheelchair would fit through. Before that, there were three rooms in her house that she couldn't access. She thought these services were marvelous and she really appreciated what they did for her. It allowed her to stay in her home.

Rex Bowles stated he had also received a loan from District 11 Human Resources. His story was similar to Ms. Melton's. During the severe snowstorm his roof was structurally damaged. He lives on disability and was unable to borrow money conventionally. District 11 Human Resources was able to loan him the money to re-roof his home so he could continue to live there. He felt this program was just great. It allows people on fixed incomes to be able to stay in their homes and enjoy the benefits of homeownership in the community. He appreciated the opportunity afforded him and he supported their application.

Betty Milton stated she lived on Social Security and owned her home which was built in the 1920's. She needed a new roof and updating of the electrical system. She did not have any idea how she could afford it until she heard of this program. She spoke to Brenden and he was able to get the repairs done. Everyone was very helpful and supportive. It enabled her to continue to live in her own home and enjoy a better quality of life. It is a wonderful program.

Marleon Bremmer stated she echoed what the other speakers said. Her roof was bad and would not last through the winter. She could not get a conventional loan as she is on a low fixed income. Through Human Resources, she was able to get a loan for the repairs and maintain her home.

Patty Kent, Director of Housing and Development with the Western Montana Mental Health Center, stated there are three excellent proposals being presented for HOME grants. This clearly showed there isn't just one need for a special kind of housing, Missoula needs a lot of safe, decent and affordable housing for many different types of people. The needs continue to grow. She was pleased to see both the Human Resources Council and WORD, who have excellent track records, applying for new grants. She was also happy to see Mike Barton working with Opportunity Resources. She supported all the grant applications today.

Nancy Senne stated she is the parent of a 21-year-old that works at Opportunity. He is on the waiting list for a group home. She felt this home needed to be replaced and she supported the application.

Merilynn Foss stated she was a member of the Board of Directors of Opportunity Resources. She echoed the need for the replacement of the Cloverdale Group Home. She also stated the experience of purchasing and retrofitting another duplex was extremely positive, however they could not find another home to purchase. They are at a point where the clients need a new home to meet their needs built from the ground up. The Board is 100% in favor of this application and will do whatever is necessary to make it work.

Mike Barton stated the applicants will continue to take written testimony until September 17, 1999. He also appreciated the Commissioners support and all the people who turned out today to speak in favor of these applications. He asked that a sign in sheet be passed around to get the names of everyone who was present in favor of these applications today.

Hans Westphal stated he wondered if a four-plex or six-plex would make more sense than a duplex. It might be cheaper to build a quadra-plex than a duplex.

Ken Brown stated this was a good comment and had been considered. The problem encountered was the individuals need more direct contact and with the various separate facilities it was hard to see if there would be adequate supervision. It was a safety concern. A duplex would offer the privacy and be afforded with the staffing needed.

Chair Kennedy stated this hearing showed there was community and County support for these projects. He was hopeful the three applications would succeed. There being no further comments, he closed the public hearing.

Cindy Wulfekuhle stated the action today would be to approve submitting the application for Opportunity Resources and also approving the request by the Human Resource Council for \$10,000 of CDBG Program Income money that will be used as leverage. Also, if the Commissioners want to give her authority to work with Opportunity Resources on their funding package, they could do so as well.

Chair Kennedy suggested that the Board direct Cindy Wulfekuhle to develop that financing package for one or more of the applicants with a recommendation.

Commissioner Evans moved that the Board of County Commissioners approve submitting the application on behalf of Opportunity Resources; approve the request by the Human Resource Council for \$10,000 of CDBG Program Income money to be used as leverage; and approve the request by Opportunity Resources, Inc. for \$10,000, with the potential for more money if it is determined to be needed, of CDBG Program Income money to be used as leverage. The Commission finds all three of these projects in the public interest and supports them strongly. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

The Board of County Commissioners took a five minute break to allow those who spoke to leave the room.

Hearing: Missoula Rural Fire District Annexation Request – Invermere Subdivision (Miller Creek)

This is a hearing on annexation into the Missoula Rural Fire District. A petition has been received by the Clerk & Records Office to annex a parcel of land, located in Missoula County, into the Missoula Rural Fire District.

The petition has been checked and verified. It contains signatures of more than 50% of owners of the privately owned land in the area to be annexed and a majority of taxpaying freeholders within the area described, thereby meeting the requirements of 7-33-2125 M.C.A. for annexation of adjacent territory.

The area to be annexed is described as follows: "The proposed Invermere Subdivision located in the SE 1/4 of Section 12, Township 12 North, Range 20 West, Missoula County, Montana."

Bill Lindstrom, Missoula Rural Fire District, stated this is a subdivision that is going in near the top of Miller Creek. There has been some problem with some of those areas being out of the fire district. He recently went through the process of getting all that area reannexed into the fire district. This may very well be in the fire district, but they wanted to go through this process to make sure it is included.

Chair Kennedy asked if this was part of the area where the records were incomplete?

Bill Lindstrom stated that was correct.

Chair Kennedy stated the some of the records are incomplete as to whether or not certain properties are within the district. Certain people have received tax bills and have challenged the tax, claiming they are not in the district. The purpose of this is to clarify the records.

Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the annexation of the proposed Invermere Subdivision located in the SE 1/4 of Section 12, Township 12 North, Range 20 West, Missoula County, Montana, as requested. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing: Greenough/Potomac Fire District Annexation Request – Camp Utmost

This is a hearing on annexation into the Greenough/Potomac Fire District. A petition has been received by the Clerk & Recorder's Office to annex a parcel of land, located in Missoula County, into the Greenough/Potomac Fire District.

The petition has been checked and verified. It contains signatures of more than 50% of owners of the privately owned land in the area to be annexed and a majority of taxpaying freeholders within the area described, thereby meeting the requirements of 7-33-2125 M.C.A. for annexation of adjacent territory.

The area to be annexed is described as follows: "Camp Utmost Addition located in the SE 1/4 SW 1/4 of Section 5, Township 14 North, Range 14 West, P.M.M., Missoula County, Montana."

Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the annexation of the Camp Utmost Addition located in the SE 1/4 SW 1/4 of Section 5, Township 14 North, Range 14 West, P.M.M., Missoula County, Montana. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Continuation of Hearing and Decision On: Petition to Establish Snowdrift Lane as a County Road – (from 9/1/99)

This is the continuation of a hearing on a petition to establish "Snowdrift Lane from Mullan Road to Tract 10B and 10C of Certificate of Survey Number 3714 located in Sections 3, 4, 9 and 10 in Township 13 North, Range 20 West, Missoula County, Montana."

Commissioner Carey and County Surveyor Horace Brown visited this site on Tuesday, September 7, 1999 and would present their report today.

Horace Brown stated the road was inspected and the right-of-way is clearly marked in most cases by fences. The road is in good condition and he saw no problem in taking the right-of-way as County.

Chair Kennedy continued the public hearing. There being no comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners establish Snowdrift Lane as a County road.

Commissioner Evans offered an amendment to include the side road cul-de-sacs, as they are all listed as Snowdrift Lane, they do not have separate names.

Nick Kaufman stated they were all listed as Snowdrift Lane. There is one called Ryegrass Lane. At this time, after meeting with the Road Committee, their consensus was not to include the side roads at this time, just the name Snowdrift Lane per the petition.

Commissioner Evans withdrew her amendment and seconded Commissioner Carey motion.

Michael Sehestedt added the County did not have jurisdiction due to lack of notice.

Commissioner Carey stated he made the motion as he felt it was in the public interest to not only pave the road sooner rather than later, but it also gives some influence over how that area potentially develops.

Commissioner Evans clarified the motion was merely for accepting the road as public right-of-way, it was not the RSID.

Michael Sehestedt stated it also was not acceptance for maintenance.

Commissioner Evans agreed.

Chair Kennedy stated he saw no advantage to the public in doing this unless there is some effort made to improve that roadway. If this were approved conditioned on a successful RSID, it would meet his standard, otherwise he cannot see obligating the County for that purpose. He then called the question. The motion carried of a vote of 2-1 (Chair Kennedy opposed).

Continuation of Hearing and Decision On: Petition to Create Missoula County Sewer and Water District (Target Range Area) – (from 9/1/99)

This is the continuation of a hearing on a petition to create a Missoula County Sewer and Water District.

A petition has been received by the Elections office to create a Missoula County Sewer and Water District.

The petition has been checked and verified. It contains signatures of 38% of the registered voters of the described district, thereby meeting the requirements of 7-13-2204 M.C.A.

The areas to be included in the Missoula County Sewer and Water District are described as follows:

Parcel A – A Tract of land for Sewer and Water District purposes located in portions of Sections 25 and 36, T13N, R20W and Sections 30 and 31, T13N, R19W, Principal Meridian, Montana, Missoula County, Montana, and being more particularly described as follows: The Sewer and Water District to be bounded on the south by the south right-of-way of South Avenue, on the west by the west right-of-way of 37th Avenue; on the north by the north right-of-way of Spurgin Road; and on the east by a line 30 feet east and parallel with the east section line of Section 25, T13N, R20W, including all prolongations of each line to make a closed Parcel A, as shown on Exhibit B.

Chair Kennedy: We had, beginning on August 4th and continuing on September 1st, and ending today, a hearing for that purpose. So we continue the hearing and ask whether there is any additional comments anyone would like to make with respect to the petition to create Missoula County Water and Sewer District in the Target Range Area. Any comments before the hearing is closed. Seeing none, we'll close the hearing and ask for discussion or motion of the Board.

Commissioner Evans: May I read something into the record?

Chair Kennedy: Yes Commissioner Evans.

Commissioner Evans: FINDINGS OF FACT:

1. A petition signed by at least 10% of the persons residing in the proposed Target Range Sewer and Water District has been received.
2. No plan or proposal whereby the proposed area will be provided with sewer or water services has been advanced or suggested.
3. No benefit or rationale for the inclusion of Spurgin Road/Tower Street County park property has been even suggested.
4. The benefits to the proposed district which were put forward at the hearing consisted of statements regarding the area having a voice in its future and opposition to the extension of city sewer to the area with its potential for annexation.
5. It is impossible to determine what benefits, if any, in the form of a sewer or water system will result from creation of the district.
6. It is impossible given the absence of any plan or concept as to the nature of the system or systems to be constructed to determine if all or any part of the area will benefit from the creation of the district. It is also impossible to determine if areas not included in the district will benefit from the district.
7. No application for extension of the district to other areas has been received.
8. A hearing as required by law has been held and all interested citizens given the opportunity to testify on the question.

CONCLUSIONS OF LAW:

1. The Board of County Commissioners has jurisdiction of the petition and has taken the required steps to make a decision on the question.
2. Since no rationale presented justifying the inclusion of county land was advanced and no benefit appears from its inclusion, the boundaries of the proposed district should be adjusted to exclude the County land and the northerly boundary of the district located on the centerline of the right-of-way for North Avenue.
3. While absence of any identified benefit in the form of a proposed sewer or water system makes the creation of the district suspect, it is impossible to determine that there is no benefit.
4. MCA § 7-13-2208(2) requires submission of the question of creating a district to electors.

ORDER:

1. The final boundaries as adjusted are: An area bounded on the south by the south right-of-way of South Avenue; on the west by the west right-of-way of 37th Avenue, on the north by the center of the North Avenue right-of-way and on the east by a line 30 feet east and parallel with the east section line of Section 25, T13N, R20W.
2. The question of creating the district shall be submitted to the electors at the June 2000 primary. The elections administrator is directed to give the required notices and to prepare the required voter lists and ballots.

I would also like to state from my own personal opinions that this is a misuse of the statute. I do not believe for one minute that that is what the legislature intended when they put this section of law in. I see absolutely no benefit whatever to anybody in that district. It is going to cause them more expense and problems than they will gain. If it were possible to simply say, "No, we won't create this district," that would be my intent. But since the law requires for the hearing and the election, then I would move that we do that and that we delete the County park land as listed in the findings of fact and conclusions of law.

Chair Kennedy: Barbara, are you including the County owned land as well as the park land?

Commissioner Evans: Yes.

Chair Kennedy: Yes. Thank you. Is there a second to that motion?

Commissioner Carey: I'll second that motion.

Chair Kennedy: Okay, any discussion? I would like, at this time, before we act on that, to ask our counsel to discuss the consequence of the successful vote on this with respect to taxes raised and costs incurred and would you please give us an assessment of that Michael.

Michael Sehestedt: Okay, I've got concerns. I sat through the initial hearing on this and generally the focus in water and sewer district hearings is on what sort of proposal do we have. It's a concept looking for a vehicle to implement the concept. In this case we have a vehicle which apparently is looking for a concept. The conversation basically sounded more like an argument for a Community Council than a Sewer and Water District. I'm concerned that the way the law is set up, after we've had the hearing and determined what areas might benefit and adjusted the boundaries appropriately, we have to submit it to a vote of the people. I think the exclusion of park property, if you'll recall at the hearing I asked the proponent why the park ground was included. I had one petitioner tell me that wasn't the petition she signed and the person that actually prepared the petition said, "I'll have to think about it and get back to you." I don't believe we've had any further testimony and there was no apparent benefit from including that property in the district so that exclusion is justified. As to the rest of it, once we've adjusted the boundaries, we have to submit the matter to a vote of the people. I hope, should they chose to create the district, they understand what they're creating. Because this isn't a Community Council, it doesn't have the corporate power to speak for the area. It's powers are related to the construction and maintenance of water and sewer development projects, period. That's what a sewer and water district does. It's a limited purpose local government. It comes with some costs. Because there are more than 10 qualified electors residing in this district, we're looking at having a five member board. The law provides that each member of the Board of Directors shall receive a monthly salary that shall not exceed the following amounts, \$60 in districts with a population of no more than 500 persons. So we've got less than 500 people, we've got 5 directors at \$60 per month. They create the district, they're signing up for \$300 a month, the salary for the directors, or \$3,600 a year. That's before they spend any money looking at the creation of doing the engineering work, finding some project that will benefit them and then funding that project. On the other hand, it does go to a vote as long as the people understand what they're doing. We leave it in the capable hands of the electorate. As I say, I am concerned that they think they're getting something other than a district whose sole purpose and sole corporate authority is the establishment and doing all of the things preliminary to thereafter, constructing and operating either or, or either and, a sewer and water system to serve the district. If they think they're getting a mini City Council or a Community Council of some sort that has powers beyond that, they're wrong. They think it's something they can do for free. They're wrong. There will be the cost of elections, the cost of the statutorily required salaries plus the cost of whatever substantive activities they undertake. Those will be solely charged and taxed against the people within the district. This isn't a general tax levy whereby everybody contributes to pay for this for the people in the district.

Chair Kennedy: Commissioner Evans?

Commissioner Evans: I was going to have you ask the question, but I have another one as well. One, what is the filing time for these positions and two, let's assume that if they have to pay the cost of the election that we have 16 blocks or whatever of homes, to whom do we assess the cost for the election.

Michael Sehestedt: The way the statute works, we carry that. Thereafter, if it's created, then all subsequent elections would be charged against the residents. Now, there is one possibility. This is set up so, and there are three possibilities. Elections connected with the sewer and water district must be conducted either in conjunction with a primary or general election or by mail ballot. This is set up so that the first election would be conducted in conjunction with the June 2000 primary, which is the first general election that we have in that area. It's obviously cheaper than doing a mail ballot. A second possibility is you can combine the election on creation of the district with an election for the initial trustees. At the present, your motion doesn't do that. If the district is created, there would then be an election in November for trustees. Either an election in November or mail ballot election. Proportional share of that election or total cost would be borne by the district. They would need to budget for it and pay us back.

Commissioner Evans: If I choose to add to my motion that the election and the creation would be on the same ballot, when would the folks file for their positions of their hoped for election.

Michael Sehestedt: I would have to check, Barbara, I'm sure no earlier than the first part of January for opening.

Commissioner Evans: I'm going to amend, or add to, my motion and add that we have the election for the trustees, is that what they're called, and the election at the same time on the June election.

Commissioner Carey: I'll second the motion.

Chair Kennedy: Okay, a second to the amended motion. Any further discussion about that. Okay, so the petition to create Missoula County Sewer and Water District by this motion would be placed on the ballot in June to be combined with election of the trustees for the Board. All those in favor, signify by saying "Aye."

Commissioner Carey: Aye.

Commissioner Evans: Aye.

Chair Kennedy: Aye. Thank you very much.

Commissioner Evans: I have one other question and that is since this is being called a Missoula County Sewer and Water District, I'm wanting to know how we limit the ballots that are given to only the folks who have the power to vote on it, because if this is put on a full ballot and everybody sees that, it's going to confuse everybody else who is not allowed to vote on it.

Michael Sehestedt: It will be the same thing as we do with some of our other irrigation districts for example. A separate list will be prepared of the registered electors within the boundaries of the district. Most likely we will add coding to the voter precinct registers that are used at the polling place where these people vote. Anybody coming in offering to vote with that particular coding will receive an additional ballot. One little twist I might note is that it requires a 40% turnout of the registered electors within the district and then a majority vote of that 40% to create. So, it's a simple majority but with a required percentage turnout. Another little fillip is that non-resident property owners are also entitled to vote and they will have to do that at the Elections Office and establish that they're a property owner and demonstrate that they are registered to vote someplace and they can cast a ballot in this election as well. It's a provision fairly much unique to sewer and water districts.

Commissioner Evans: Thank you Michael.

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

THURSDAY, SEPTEMBER 9, 1999

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Kennedy was in Deer Lodge attending a meeting of the Upper Clark Fork River Basin Steering Committee.

ADMINISTRATIVE MEETING

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

Professional Services Contract – The Commissioners signed a Professional Services Contract with Judy Visscher MD to act as Health Services Division Medical Director during Dr. Thompson's three-month leave. Performance schedule is August 1, 1999 through October 31, 1999. Compensation is \$1,500.00. The Contract was returned to the Health Department for further signatures and handling.

Professional Services Contract – The Commissioners signed a Professional Services Contract with the University of Montana – Missoula, Office of Campus Security for participation in the DUI Enforcement Team. Performance schedule is August 1, 1999 through June 30, 2000. Compensation shall be up to \$2,000.00. The Contract was returned to the Health Department for further signatures and handling.

Agreement – The Commissioners signed an Agreement for Provision of Professional Security Services between Frenchtown School District and the Missoula County Sheriff's Department for security services at school events. Agreement is valid for the 1999/2000 school year. Compensation shall be based on number of work hours multiplied by \$15.00 plus 12.40% of the total for work performed by regular deputies.

Agreement – The Commissioners signed an Agreement with the Montana Department of Transportation for the closure of the Huson railroad crossing in order to facilitate proper realignment of the roadway for a new railroad crossing. MDT will pay half of the cost of roadway construction by the County, not to exceed \$10,000.00. The Agreement was returned to Horace Brown, County Surveyor, for further signature and handling.

Professional Services Contract – The Commissioners signed a Professional Services Contract with Missoula Concrete Construction to dispose of waste latex paint from the Household Hazardous Waste Collection on September 16-18 by solidifying it in concrete. Compensation shall be \$25.00 per 55-gallon drum. The Contract was returned to the Health Department for further signatures and handling.

Easement Agreement – The Commissioners signed an Easement Agreement with the Aeronautics Division of the Montana Department of Transportation so that the State may continue to maintain a beacon tower at the Seeley Lake Airport which sits on Missoula County property. This Agreement replaces one signed on July 20, 1999. The Agreement was forwarded to Horace Brown, County Surveyor, for further signatures and handling.

Resolution – The Commissioners signed Resolution No. 99-060, annexation to the Missoula Rural Fire District of a parcel of land located in Missoula County, and described as "The proposed Invermere Subdivision located in the SE1/4 of Section 12, T12N R20W, Missoula County, Montana."

Resolution – The Commissioners signed Resolution No. 99-061, annexation to the Greenough/Potomac Fire District of a parcel of land located in Missoula County, and described as "Camp Utmost Addition located in the SE1/4 SW1/4 of Section 5, T14N R14W, PMM, Missoula County, Montana."

Memorandum of Understanding – The Commissioners signed a Memorandum of Understanding with Horace Brown, County Surveyor, regarding the position of Public Works Director.

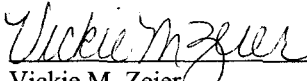
Other items included:

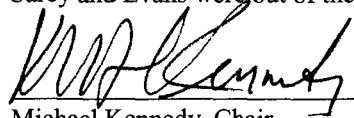
- 1) The Commissioners appointed Donald Rose to the Seeley-Swan Cemetery District Board to fill the unexpired term of Bucky Walters.

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

FRIDAY, SEPTEMBER 10, 1999

The Board of County Commissioners did not meet in regular session; Commissioner Kennedy was in Helena attending a MACo Resolutions Committee meeting, and Commissioners Carey and Evans were out of the office all day.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, SEPTEMBER 13, 1999

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

Claims List -- Commissioners Carey and Evans signed three Claims Lists, dated September 10, 1999: batch numbers 145, 166, 143, 149, 156, 159, 161 and 162, with a grand total of \$122,114.56; batch number 170, with a grand total of \$34,643.75; and batch number 169, with a grand total of \$1,880.44. The Claims Lists were returned to the Accounting Department.

Monthly Report -- Chair Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for Justice Court 1, John Odlin, for the month ending August 31, 1999.

Plat -- The Commissioners signed the plat for Security Acres, a four-lot summary subdivision plat of Tract 13, COS No. 1595, located in the NE1/4 of Section 19, T14N R20W, PMM, Missoula County, with the owner/developer being Maxine S. Lane.

Payroll Transmittals -- The Commissioners signed a Payroll Transmittal for Pay Period 17, with a total Missoula County payroll of \$654,063.81; and a Payroll Transmittal for Pay Period 17-02, a special security payroll, with a total Missoula County payroll of \$3,100.00. Both were returned to the Auditor's Office.

Lunch Program Agreement -- Chair Kennedy signed a National School Lunch and Child Nutrition Programs Application to the Office of Public Instruction for the Missoula Juvenile Detention Facility for participation in the program. The Application was returned to Alan Egge in the Sheriff's Department for further handling.

Development Agreement -- At a departmental meeting with the Office of Planning and Grants, the Commissioners approved (Commissioner Evans abstained) amendments to the Development Agreement for High County Addition as follows:

1. Delete Section 2. Landscaped Buffer (as supported by the Fire District and County Surveyor)
2. Amend Section 3. Timing Requirements (extend two years -- until October 30, 2001 -- to allow for landscaping to be in concert with the new highway improvements)
3. Post No Parking

Task Order -- Chair Kennedy signed a Task Order with the Montana Department of Public Health and Human Services to provide services at the local level for a statewide tobacco use prevention and control program. Term of the Task Order is June 1, 1999 through May 31, 2000. Compensation is up to \$25,000. The Task Order was returned to the Health Department for further handling.

Certificate of Survey -- The Commissioners signed a Certificate of Survey for a Request for Agricultural Exemption, for a parcel located in the W1/2 of Section 35, T13N R18W, PMM, Missoula County, Montana, with the owner of record being Clark Fork Compost and Reclamation, Inc.

TUESDAY, SEPTEMBER 14, 1999

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

Claims List -- Commissioners Evans and Kennedy signed the Claims List, dated September 14, batch number 100174, with a grand total of \$4,932.33. The Claims List was returned to the Accounting Department.

Monthly Report -- Chair Kennedy examined, approved, and ordered filed the Report of the Sheriff, Douglas Chase, for the month ending August 31, 1999.

Plat and Improvements Agreement -- The Commissioners signed the plat and improvements agreement for Leonard's Clark Fork Estates, a subdivision of Missoula County located in the NE1/4 of Section 19, T13N R19W, PMM, a total area of 3.75 acres, with the owner of record being Emma Court Development, Inc.

ADMINISTRATIVE MEETING

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

Memorandum of Agreement -- The Commissioners signed a Memorandum of Agreement with United Way of Missoula County to provide services to enhance the community building efforts of the Missoula Forum for Youth and Children

in Missoula County. Value of the Agreement is \$1,000.00. Term of the Agreement is September 1 through September 30, 1999.

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with the Salvation Army to purchase basic needs assistance for indigent residents of Missoula County. Value of the Agreement is \$15,000.00. Term of the Agreement is July 1, 1999 through June 30, 2000.

Contract – Chair Kennedy signed a Contract to Provide Legal Assistance to Montana State Prison Inmates Housed at the Missoula County Detention Center with Edmund F. Sheehy, Jr. The contractor will be paid a maximum of \$3,000.00. Contract shall terminate one year after commencement, unless terminated earlier in accordance with terms of the Contract. The Contract was returned to Sheriff Doug Chase for further signature and handling.

Petition to Change County Road Name – The Commissioners signed a Petition to Change the Name of a County Road. The request was to change the name of Curlew Loop to Trumpeter Court, in Missoula Development Park, Phase II. The Petition was returned to Barb Martens in the Projects Office for further handling.

Extension – The Commissioners approved a six-month extension for final plat submittal for Katie Ellen Acres, making the new filing deadline September 23, 2000, with a letter to Ron Ewart of Eli & Associates, Inc.

Other items included:

- 1) The Commissioners denied a request from HomeWORD to maintain current leases for six parking spaces for Lennox Flats.
- 2) The Commissioners denied a request from Steve McNeece of St. Patrick Hospital to forgive unpaid indebtedness of Seeley Swan Hospital District owed to the Missoula County General Fund.

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

WEDNESDAY, SEPTEMBER 15, 1999

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

Claims List -- Commissioners Kennedy and Evans signed the Claims List, dated September 14, 1999, batch numbers 157, 164, 167, 168, 171, and 172, with a grand total of \$614,023.55. The Claims List was returned to the Accounting Department.

Resolution – Commissioners Evans and Carey signed Resolution No. 99-062, a Petition to create “Snowdrift Lane” as a public highway, with no maintenance of the road until it is brought to County standards by creation of a RSID. Commissioner Kennedy opposed the resolution.

PUBLIC MEETING – September 15, 1999

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

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$614,023.55. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing: Intent to Create RSID No. 8466 (Relocation of Railroad Crossing in Huson)

Jesse Sattley, RSID Specialist, presented the staff report.

This is a petition to create RSID No. 8466 for the relocation of a railroad crossing in the Huson area. The RSID would relocate the crossing at a safer approach. The cost of the improvement is estimated at \$19,962.50. An anticipated contribution from the Montana Department of Transportation of one-half the cost, or up to \$10,000, would reduce the homeowners share to approximately \$11,528.34, plus interest, over a period of 10 years. The estimated total cost to the district property owners would be approximately \$295.59 per lot or \$29.55 per year, plus interest, for 10 years. There are 39 lots in the district. The RSID intends to make a loan from the Revolving Fund to finance the improvement. There were two letters of protest received. As suggested by Chair Kennedy, the administrative fee should be taken from the actual total cost of construction without taking into consideration the loan from the Department of Transportation.

Commissioner Evans asked if that was how it was always done?

Jesse Sattley stated the County administrative fee should be figured on 5% of the construction cost, regardless of the contribution from the Department of Transportation.

Chair Kennedy stated the total estimated cost would be around \$12,000.

Commissioner Evans asked if the residents had been told of the contribution by the Department of Transportation?

Jesse Sattley stated they did know of the contribution.

Chair Kennedy asked Horace Brown to describe the in-kind contribution of the County that is not reflected in the costs presented?

Horace Brown stated the design portion of the project was being done at no cost.

Chair Kennedy asked if any construction was going to be done at no cost.

Horace Brown stated he was not aware of any.

Chair Kennedy stated the engineering and testing is a subsidy Missoula County will provide in addition to the approximately \$10,000 that Montana Department of Transportation will provide. The amount requested for this RSID is slightly less than half of the actual cost.

Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the creation of RSID No. 8466 for the relocation of a railroad crossing so that it is at a safer, 90 degree angle over the railroad tracks in Huson, Montana, so this crossing will not be closed. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans stated she was pleased the people in this area cared enough to pay for the relocation of this crossing.

Hearing: Missoula Bible Church Rezoning Request (C-I1 to C-P1)

Allison Handler, Office of Planning and Grants, presented the staff report.

This is a request to rezone a 4.59 acre parcel of land located southeast of the Missoula International Airport to C-P1 (Public Lands). The property is currently split-zoned C-I1 (Light Industrial) and C-P1 (Public Lands).

The property is currently occupied by a large industrial warehouse building most recently utilized by Ironwood Manufacturing. Missoula Bible Church would like to adapt the building for use as a church. Churches are considered a quasi-public use, permitted in the C-P1 zoning district; they are not permitted in C-I1. Use variances, such as to allow church use in an industrial zone, are not granted in the County. The church is therefore requesting a rezoning.

Missoula Bible Church describes itself as striving to be a regional evangelist church – some of its current members drive from as far away as the Seeley Lake area on a regular basis. The church is seeking a large building with large land area, to accommodate current and anticipated membership. At the same time, this rezoning poses particular problems regarding access, parking and appropriateness of the location for this or other uses permitted in the C-P1 zoning district. A complicating factor is the proximity of this property to the airport and the fact of it lying in proximity to the flight path of aircraft approaching for landing.

Staff looked a number of different issues when making their recommendation of approval. The 1998 Comprehensive Plan designates this area for light industrial with the exception of that one small portion of the property that is already zoned C-P1 and the Comp Plan for that area is Parks and Open Space. The Comp Plan does question whether or not there is too much land given to light industrial. As this proposal will be taking some of that land out of industrial use, staff could find Comp Plan compliance.

The property is accessed from Highway 10. Staff had a question about sufficient on-site parking, they may have as many as 300 people in their congregation and are anticipating growth. This would require approximately 75 parking spaces and currently there are only 30. The question arose of adequate space for parking on-site. That will be determined at the time of building permits for remodeling.

In terms of general health and welfare, staff looked at the proximity to the airport. The property is outside the 65 decibel zone. The Airport Authority was consulted and did not have any concerns regarding this proposal. This is a very diverse district, largely industrial, although there are also agricultural uses and commercial uses. Staff finds compliance with the Comprehensive Plan with adjacent land uses and the character of the district. Staff recommends approval of this rezoning request.

Chair Kennedy opened the public hearing. There being none, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request to rezone the property legally described as Tract A2-B, COS 4264, from C-I1/C-P1 to C-P1, based on the findings of fact as set forth in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing: Appeal of Comprehensive Plan Decision (Western Wireless Communications Tower)

David Loomis, Office of Planning and Grants, presented the staff report.

Dave Loomis: This is an appeal of a staff denial of a Comprehensive compliance for a building permit. Its proposal is a 135 foot tall, three sided, metal lattice self-supporting tower and an equipment building of about 10' by 20' on the ground. It is located on the northwest flank of Mount Dean Stone in Section 9. The other towers are in a different section. The actual site is open and rolling grassland, but has some trees. It is located about 4,500 feet downslope from the top of Mount Dean Stone. About 2,500 downslope from the top of Mount Dean Stone, the Board, in 1992, approved on appeal another tower at that site. This tower is a separate site and is 2,000 feet from the other site. There are no other towers in the vicinity. Resolution 83-99 established a process where building permit applications are reviewed for compliance with the Comprehensive Plan, for unzoned areas and within the building permit jurisdiction. This review and determination is

to be by the Planning Director or designee. An appeal can be brought of that determination to the Board of County Commissioners. County Resolution 85-082 also provided guidelines for that determination. Basically, Guidelines A and B say it is in compliance if it is included within the activities designated by the plan. Guideline C talks about if it is different from that land use designation, but compliance with the land use goals, objectives or policies, it could be found in compliance. The various plans used to review for this were the South Hills Comprehensive Plan, the 1975 County Comprehensive Plan, the 1990 and 1998 Urban Area Plan and Update, and the 1995 Open Space Plan. All of the Comprehensive Plans designate this area as open and resource lands. The Open Space Plan also designated Dean Stone Mountain as a potential cornerstone and an accessible visual resource as seen from the valley. The findings in the staff report are those findings required by the resolutions. In summary, the findings show that it is not in compliance with the Comprehensive Plan or Plans for the area; that the proposed tower is 2,000 feet away from any adjacent tower; that there is a cluster of existing towers and facilities at the top of Dean Stone Mountain; and that no uses within 300 feet of the site are similar or compatible with the proposed tower. That is what led to the recommendation that this is not in compliance with the Comprehensive Plan.

Bryan Romeijn: My name is Bryan Romeijn, I'm with Western Wireless, I'm the regional development manager. We're looking at, we have an existing site on top of Dean Stone right now, we are on a short term lease on the facilities right now. With the growth of cellular and that kind of stuff, we're looking at adding some more antennas and some more microwave to, you know, tie our system in together and we're working on that. And, like I say, the facility we're at right now, the tower, is structurally out of space, it's quite a few users on there, there's our cell phone there, there's quite a few two way users and there's paging up there and there's quite a group of users on this tower. And, like I say, we're just, we're in the position now where we're upgrading microwave, we need to add more cellular antennas and we are not able to come to a long term agreement with our current landowner up on top. We started exploring some other lease options with other landowners up on top there and our current landowner and we weren't, the land we were able to come up with a 30 year long-term agreement with the Line Family Trust and that is where this property is. That's why we're asking to build this 135 foot tower and basically add some long term growth to our system. You know, this tower that we put up there is going to be able to accommodate the dishes, the swapping of dishes that we need to do as capacity grows and also the antenna additions of additional cellular antennas to handle the additional callers that we are encountering right now. I'd like to put a couple pictures of our existing Dean Stone site, they show our existing facilities, they do show inside our building that run out of the stations. I also want to show the tower. That's our main concern is the tower, that's where our antennas are at and, you know, we just need a long term solution and we're not able to get that with the current situation.

Chair Kennedy opened the public hearing.

Chris Line: Good afternoon, I appreciate you guys hearing our statements which are in favor of this tower proposal. My name is Chris Line, a landowner up there. I'd just like to also introduce my parents, Bob and Ann Line, and my uncle, who are also here today. It's really been important to our family since grandfather bought it back in '33, and developing awareness to keep the place as one piece, as a whole, and to keep it as much looking as it is now as we're able to do. And that also seems to be in line with the law of the community with regards to the comments and actions made in the last 10-15 years from the community, trying to reserve and preserve some open space resources around the community. And so when this proposal was brought to us we thought that it really fell right in place with what we wanted to do in terms of enabling, through the lease money, to continue this property much as we have it. It's not new that the place has not needed supplemental income. It is not self-sufficient by itself. The cattle industry is not such that it allows for that. It sounded like a great opportunity that does not conflict with any current land use which are namely timber management and agricultural use. In order to maintain this as an open space, there's certainly a lot of maintenance cost that goes into that. As everyone has who owns a property in particular weed control has been very aggressively fought with our family both, particularly with my father Bob, and Uncle Dave, and my brother and I have spent a lot of times out there in the fields as well. So there's associated costs with that and we've been happy to kind of have that as an oasis in the community with regards to weeds. But, they are certainly quite a burden. So this is also something that will allow us to be able to continue to make that place look as it is in the coming years as Tim and I plan this next generation coming along to keep it as well as see it now. I just had three points, the third one here, I may be skipping over a few things here. But, the third point I had is that the existing tower that was up there as was mentioned before in the meeting, went through this process and it was to be found, as I understand, substantially compliant with the Comprehensive Plan. And, for that reason we're hoping that the Board will see that direction as well. Certainly open to any questions that you guys might have and I thank you for hearing our statement which is in support of the tower.

Chair Kennedy: Mr. Line, I hope you didn't shorten your testimony, we'll give you the time that you need. Do you have?

Chris Line: I think those are the relevant things that we wanted to bring out there.

Chair Kennedy: Okay, thank you. Next person please.

Ann Line: Good afternoon, my name is Ann Line and I have been privileged to live on the South Hills Ranch, as we call it, for 35 years. I would like to support this proposal to have the tower on our property for all the reasons that Chris said. We are aware what the visual impact might be if we didn't have a tower up there. And, although I do understand it is 2,000 feet distance from the last tower that was put up, I was driving in from Alberton the other night and I was looking around the whole valley just to get an idea of what the impact might be of one more tower just down the hill from the other one. And, it's a huge valley, there's lots of mountain tops and I could barely see the lights that were there already and I figured we have a cluster of towers there now and that the tower that we would propose, yes, would add, I don't know, one or two or more lights, but in the overall view of the whole valley, I think it is, would not be too significant, in my opinion. And it does tend to cluster them together. Thank you very much.

Chair Kennedy: Thank you, Mrs. Line. Next person please.

Chris Line: I have four statements here that we wanted to submit as public record.

Chair Kennedy: Is this what you've already submitted, Chris, or is this additional?

Chris Line: My brother has one but we have some additions from other family members. So, I don't know who I might give those to? The other thing is that we understood that some of the visual impact of this tower, as I understand it, is not going to have to be painted nor is it to have a lighted, a light on top of it. So, we're very pleased to see that and also at 135 feet it's quite a bit smaller than the second tower that was brought in in '92, at 280 feet. So, again, the impact to our property seemed well within how we'd like to see it and allow us to continue.

Chair Kennedy: Thank you. Anyone else who would like to speak?

Ron Erickson: My name is Ron Erickson, I live at 3250 Pattee Canyon. I really have three different hats here, I think. First of all I am a neighbor. I've lived in Pattee Canyon since 1971 and our viewshed is Dean Stone and the slope of it. Second of all, I think many of you know that I've worked for some time with the Open Space Advisory Committee and with that work, a couple of things happened. One is, as Dave Loomis has already talked about, we were able to work on an Open Space Plan. You passed that Open Space Plan. We did have some potential cornerstones and this is one of them. That cornerstone process was a long process involving lots and lots of people in Missoula. The second thing that happened with the Open Space Committee was that we've been involved one other time with towers and in this case it's the North Hills. You may recall that when the City purchased the North Hills as part of the Open Space Plan, there was an immediate concern by some people in the City that more towers be placed upon it. The Open Space Committee, and in fact the whole Open Space community, was very, very concerned about that and was worried about the kind of policy that was out there about where towers were going to go. Fortunately, that hasn't happened as we look on out to the north, particularly the hill above the peace sign is still as it was, no new towers and I think that's been very good for the community. The third hat that I have is that I do serve as the representative, the House representative, State of Montana, for southeast Missoula. So, I represent some 9,000 people or so who, among all the people in Missoula, are closest to this particular site. The way I represent, the ideas, of course, that I represent the people, I also, the district, in fact, includes a couple of mountains and I've always tried to figure out how it is you represent mountains as well as people. Dean Stone is one of the mountains, as is Mount Sentinel. So, I try to think about the mountain as mountain as well. I had some questions when I came and I was very pleased when young Mr. Line explained a couple of things I hadn't known. I was wondering whether or not this new tower was going to have lights. That would be very, very significant for the people and I understand now that it will not and that makes me very happy and I think will make quite a number of my neighbors happy as well. I was also wondering about what the actual current size of the towers was, and he gave me that answer and that's helpful too. It still seems to me that this tower is quite high, 135 feet still seems high, but I'm pleased to hear that it's only half the height of the last. I still have a couple of more questions. First is what's going to happen to the tower that they were now using but can't in the future. What happens to that? I'd like to know that. The other kinds of questions I have have to do with you folks, the three County Commissioners and policy. I understand from what Dave Loomis said in terms of how this decision has been made but I wonder about the overall policy, where it is that we decide we're going to put towers and how those decisions are made. I know from my Open Space work that the people in the South Hills have been very upset, for example, that the Open Space bond didn't do them any good. And they wonder whether or not the South Hills is sort of a sacrifice. Is that the way it's going to be working out here, is that the place that we're just going to continue to put tower after tower as a sacrifice zone. How do you make that decision. Is there some kind of public policy that says here's where we're going to put them all, all of these towers, because clearly there can be more coming along the line. So how that decision is made and what your policy position is, how to make that decision, is really important to me, and I think to a lot of people in the South Hills. I must say in conclusion that I'm pleased about the light but that I would still support the Planning Department's idea that this might not be the place for a tower. Thank you.

Chair Kennedy: Thank you. Is there anyone else that would like to testify?

Max Murphy: My name is Max Murphy and I own several towers on the south side of town. A long time ago when we started building towers up on Dean Stone Mountain one of the first people to build up there was Cellular One. One of things that they, one of the reasons that they built up there was there are no high power uses up there. People that owned it back then are not the people that own it now and there are three or four other high power facilities that are looking to move up there the next couple years. So all of sudden that site where we allowed them to go is not a very good site for cellular phones because the interference of high power television, high power radio. So, we've kind of forced them off that site, the new owners did. Putting the tower site about 3,000 feet away from where they are now makes a lot of commercial sense. One of the problems that we have up on Dean Stone, and with the increase of, we have wireless TV up there, several beeper services, television stations, a couple more radio stations are going up there, the travel on the road that we have is not good.

Commissioner Evans: I'd like you to show me which road that is whenever you're done.

Max Murphy: I don't have a map, do you have one. Okay. We go up Pattee Canyon right now and it's about 6.8 miles to the top. Some of the side hills are really, really steep. Why anybody ever built that road is really, totally beyond me, but they did, in fact they even had a subdivision up there for a while before the fire of '76. Access is an issue that I have and the Lines hold a key ingredient to that, being able to access that ridge from their property would make that whole communications site more beneficial for everyone up there and people going up there. Now, why should access to that site be important? Well, one of the considerations, when we had decided, everyone decided to go up to Dean Stone, was to isolate where all the towers were so there weren't towers on Mt. Sentinel, so there weren't towers on Target Range Bluffs, so there weren't towers on Blue Mountain, and it makes sense to kind of keep them all into one direction. How does that take care of viewshed? Well, if you look in one direction, to the south, southeast, and there are towers, you have a bunch of other directions you can look, you don't have to worry about the towers. Are towers essential? Yeah, I'm sorry, they are. As a matter of fact, it's kind of like stoplights. I hate stoplights, but I don't know how else you're going to do it. End of comment. Thank you very much.

Chair Kennedy: Thank you, Mr. Murphy. Yes, Barbara?

Commissioner Evans: I would like you to come up and show me the road you're talking about Max.

Max Murphy came forward and pointed out the road to the Commissioners. (As part of this testimony was given away from the microphone, there are some gaps where the conversation could not be heard).

Commissioner Evans: And the road you are saying they would use to get to this point is here.

Max Murphy: There are a bunch of roads that have been built up there. They built those roads when they did the logging up on this area here a couple years ago. From here, there's a benchline right here, there's a flat ridge up here ... being able to access some of the shortest here would make it ...

Commissioner Evans: So if they didn't use this road to get there, but they used this road to get there, it would eliminate unsafe turns, or, I want to be clear on what you're saying.

Max Murphy: That's right, here it's a thousand feet straight down and it's about 12 feet wide. In the winter time you have a lot of avalanche problems because you also have about 400 or 500 feet on the other side there.

Commissioner Evans: Thank you. The road that they will currently use to get there is this one.

Chair Kennedy: No, that would be a new road, that would be a new access.

Commissioner Evans: Okay, which one will they be using to get to here.

Max Murphy: ... there's a fence right there.

Bryan Romeijn: I believe our confirmed access is of the Line family come all the way down to the bottom there, I don't know what that street is ...

Chair Kennedy: I think the whole question is what about access to Dean Stone? Will the access to the proposed site be accessible to everyone who uses Dean Stone, that's the question.

Bryan Romeijn: I believe ... come off the existing road that is there for Dean Stone.

Chair Kennedy: I understand that. We're talking about the new road that apparently ...

Bryan Romeijn: ... coming through the Line family

Chair Kennedy: And that would be accessible to everyone on Dean Stone?

Bryan Romeijn: Just ourselves.

Chair Kennedy: Do you understand that Barbara? They won't be able to use this. The only people who will be able to use this, should this be approved, would be the Line family. Everyone else up here would have to use the existing one.

Commissioner Evans: And the point I'm trying to get to, and I'd be happy if you'd come up and point out to me what you consider the road you're talking about. What I'm trying to find is some way to be able to grant to you what it is you want, make it safer for other towers users, tower owners, up there, also have a better access maybe by using the same road you use, and that way, this is me speaking, not the Board, be able to grant you approval for what you want in return for making safer transportation for everyone. Do you guys understand what I'm saying. Is that what you were saying? Would you like to come and show me the road you would be using if this is granted.

Chris Line: This is the top of Whitaker Drive where it dead ends in the corner and the section line begins. The access that Cellular One has been using ... is to go up this north line to what was an old fire break road. It comes up to approximately here and then there are other roads starting at this point that go back up in here, up back and forth into a ridge point ... there's a switchback here ...

Commissioner Evans: And that is already cut into the mountain?

Chris Line: Those are the roads ...

Chair Kennedy: Are they currently being used?

Chris Line: By our family only.

Chair Kennedy: I think the question that Barbara had was, my interpretation of it is, will that same one be accessible to everyone else.

Commissioner Evans: That's what I'm trying to get at, can we eliminate people having to use these unsafe roads by allowing them to use these more safe road and everybody access their towers on the same road.

Chris Line: I guess we'd have to come up with a comparison to see if these roads are indeed safer. Our family would have to talk about that, I guess. And I think there are some very big issues with regards to weed ..., that's just off the top of my head. We have spent an immense amount of resources on keeping this place weed free and I don't know the financial assets of that.

Commissioner Carey: Currently contemplated, it would go this way.

Chris Line: Well, with the addition of this new tower, as I understand with the lease, easement that we have given Cellular One, their traffic will not interfere with anyone else using this road, because their easement would be through our place. With the addition of the new tower, there is no added traffic, in fact there might be a reduction in traffic as they go through our piece and not through Pattee Canyon. That is if they don't have any other, Cellular One doesn't have any other interests up on the very top.



Chair Kennedy: So the proposal, should it be approved, would mean that you and Cellular One would utilize a new roadway, starting at the top of Whitaker to the site, exclusively, and no one else would be able to use that.

Chris Line: Currently, that how we've thought of it, and it is an existing road, there's no road to be built.

Chair Kennedy: But it's not currently used?

Chris Line: Just by the family, by our family exclusively.

Commissioner Evans: How many other towers are up there, number-wise, we've got Max and Sheila here, we've got the one they want, and the one that Cellular One currently has. Is that all the towers that are up there?

Bryan Romeijn: There's more down the ridge as it was mentioned in the staff report, toward the South Hills.

Chair Kennedy: What we want you to do is go to the microphone so we can get you on the record, identify yourself again please.

Bryan Romeijn: Bryan Romeijn, development manager. Just following up on other towers, I believe there's two steel structures on top of Dean Stone right now, FM and then the current tower that we're on. That other tower is pretty maxed out also. And I believe there's some, there's a wood pole that I believe is up there holding an FM radio station up on top, and then that, of course, 280 foot FM tower that's down the ridge. And then also there's another cluster of towers that are down toward Lolo that up on the ridge there also, I noticed wasn't on the staff report. And then also in regards to the tower, once we move off the top there, that tower still has other users in there and still is owned by our current landowner.

Chair Kennedy: So the answer to Mr. Erickson's question about what happens to the existing tower ...

Bryan Romeijn: It stays.

Chair Kennedy: ... it will get utilized by someone else.

Bryan Romeijn: Yeah, it's, there is other users up on top there, and currently using it. And I do have the determination from the FAA, I don't have copies or anything like that, that did come up with the determination of no paint, no lights, it's not a navigable hazard or anything like that.

Commissioner Carey: Over the lifespan of the 30 year lease, do you have, what's your estimate of how many more towers or dishes or ...

Bryan Romeijn: Should be no more towers, the tower that we're building up there is structurally going to adequately handle our microwave. I think microwave is our big key anymore, because we see our Evaro side, we see the downtown side, we have another microwave pod location at a bank building, WTCI and what's happening is with the growth of callers and that kind of stuff, we're ending up growing with our microwave and adding dishes that are just a little bit larger in size to handle the amount of traffic and, you know, this is going to handle our needs, long-term needs up on our Dean Stone site.

Commissioner Carey: Without any additional dishes?

Bryan Romeijn: With additional dishes on our tower, no additional towers or anything like that, the tower, that 135 foot tower will handle everything we need. We also have a dish that needs to go to Hamilton. That dish needs to be up at the 120 foot height and that's our highest dish on that tower. This is going to give us, you know, this long term needs of moving dishes around and that kind of stuff because it's going to be structurally adequate to handle it.

Chair Kennedy: So your expectation is there'll be multiple dishes up there. Can you give us an estimate of how many?

Bryan Romeijn: It's currently kind of similar to what's on that other tower, probably the 6 to 8 foot, somewhere in there.

Chair Kennedy: The number?

Bryan Romeijn: Oh, the number. I think right now we have currently three dishes on our tower right now. We're looking at adding a fourth one to Evaro, our site that we have over there by Evaro, next year, and that would bring it up to four dishes.

Chair Kennedy: And that's the max for that particular tower?

Bryan Romeijn: It depends on what other sites, you know, as far as, you know, that's the great thing about Dean Stone, it sees a lot, it looks at the valley and everything like that and it's critical ...

Chair Kennedy: Okay, let me ask the question differently. What's the structural capability for handling dishes on that particular tower that you're proposing.

Bryan Romeijn: I think we got it speced out for it's either 6 or 8 dishes.

Chair Kennedy: Okay, thank you. Now, what about your competitors. Are they, I imagine they'll be seeking sites as well.

Bryan Romeijn: They, I believe, probably have a current long term lease up there on the top of the, the top of the Dean Stone site right now. I don't know what their plans are or anything like that.



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Commissioner Evans: I would like to be able to grant approval for this, but I would also like to make it better for the current folks who have dishes and towers up there to use, what is probably a safer road than the ones they're currently using, especially in the winter. I see your hand Mr. Erickson. And, I'm wondering whether there isn't some way to have an understanding with the folks who currently have towers up there to use your road in order to make it safer for everybody. Mr. Line, I would appreciate your comments.

Chris Line: You know, in my opinion, I'm not sure that the road is much better than what exists there. It is certainly shorter. There's a shorter time of access up there. You know, it's certainly a difficult position. My brother is unable to be here today and he is a limited partner within the partnership and I think we all five of us would have to talk about that. I think our biggest issue certainly is with weed control that's up there. We have made steps with Cellular One to specify a certain path that they're to be on and not to be off of that path, which will help to maintain our weed management. Certainly concerned about the liability of much more traffic going through there, that scares me quite a bit. Those are just two things off the top of my head. I don't know if we would be prepared at all to make an agreement like that at this time.

Commissioner Evans: It appears to me, and I'm certainly no expert on it - I'll be right with you - to state that at least the road to the top of Whitaker is a maintained road, summer and winter, which I believe would add some measure of safety, and from Whitaker to the tower site, appears to me to be shorter, at least maintained higher up than the other road, and I would just like to provide some measure of safety for everybody who uses them and find some method to get your approval here, because I'm not sure you're going to get it. That's my whole point.

Chair Kennedy: Mr. Erickson, did you have a comment?

Ron Erickson: I agree with Mr. Line that the new road would not necessarily be safer. It is certainly incredibly steep and if you go ahead and take a look at the map which you now have out of the Pattee Canyon road, is a road that leads up Larch Camp and is maintained to at least the height of upper Whitaker. So the basic geometry of the thing says that you're going to go ahead and be steeper going through the Line's place, so I must question whether or not on that basis this is a good idea. The second basis, I'm very concerned as public policy about whether we want to have a loop road from over Dean Stone because perhaps the Lines can work it out to make sure that their road remains a private road with keys for all of the people who have towers up there and perhaps that could be made to work. But if we start to talk about that as a public loop someplace, I think that's not in the best interest of this County to have that whole system wide open. So, I'd be very concerned about the public/private nature of a loop road that would exist once you cross that very short boundary between the Line's property and the present road.

Commissioner Evans: And I wasn't for any intention suggesting a public road.

Chair Kennedy: We understand that. Mrs. Line?

Ann Line: I just wanted to tell you about the road again. I've been up both those roads and I don't see that our road is any safer than the other road. Our road is not maintained at all in the wintertime. We access that road by snowmobile, which I believe would be the way that Western Wireless would offer. But it's not, it's not an answer to the question of safety. The other point I want to make is we have cattle up there for much of the year. They're down in the winter where we feed them and we put them back up in the spring. They're up there now and we have them up there until probably November, when the snow comes. And that's quite a factor to keep in mind too in terms of coming and going and trying in and out of the fence with the cattle getting out.

Commissioner Evans: And I apologize if I was wrong, I simply wanted to explore that issue.

Ann Line: And I think that's a valid point, that, I just wanted to be sure that you all understood what really the territory was like what the current land use was and how we access it. Thank you.

Chair Kennedy: Thank you, Mrs. Line.

Michael Sehestedt: I don't want to be too picky, we've covered a lot of important points, but I'd like to see if I could get somebody to address a couple issues under the Federal Telecommunications Act just so we have the stuff in the record. If I could ask, probably the Western Wireless people or representative to step up to the microphone. I guess, first question is if you don't have this site, what are your alternatives for providing equivalent service.

Bryan Romeijn: We need Dean Stone, you know, Dean Stone is very key site to us and, you know, we haven't looked past that and we're in very much hopes that we can make, make this work with the Line family and pull everything together.

Michael Sehestedt: Basically, you've got two purposes. One is to broadcast cell signals and the second is it's a convenient site for a microwave link between your other sites. Are there alternative sites that would meet those goals?

Bryan Romeijn: No there's not and not to stay, kind of, with the current uses of, you know, we don't want to lose really any coverage, we want to stay with the coverage that we have right now and just be able to expand our facility.

Michael Sehestedt: Are there any other cell phone services currently utilizing Dean Stone Mountain site.

Bryan Romeijn: Yes, Commnet Cellular is up on top, and I believe that, you know, that is it. Western Wireless is Cellular One.

Michael Sehestedt: Are there any other cellular services providing cell service within your service area?

Bryan Romeijn: It's just the, there's the PCS market, but as far as cellular service, there's the A and the B side and that's Cellular One and Commnet Cellular.

Michael Sehestedt: Thank you.



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Chair Kennedy: I'd like to follow that with a question, if you don't mind, Bryan, that is, this is a competitive market, I'll restate my question. There's nothing to prevent anyone from coming to Missoula and compete with you and that's happened around the country, again competition has really driven this market. Where would competitors go who wish to come to Missoula, new competitors, could they come to you and utilize your facility.

Bryan Romeijn: They could either come to us, come to the Line family and locate and, you know, locate some, you know, facility on their property also or up on the top or, you know, something like that.

Chair Kennedy: Or seek some other alternative that might work as well. What I thought I heard you respond to counsel was that there really isn't any other location.

Bryan Romeijn: It's, for Dean Stone, I mean, it's kind of an established communication site for the valley, you know.

Chair Kennedy: Well, I thought that the question was is there another site or is there not another site in the valley that can allow the coverage that you're wanting to have here, or is this the only remaining site.

Bryan Romeijn: Dean Stone is a, you know, is kind of a ...

Chair Kennedy: I'm talking about your site.

Bryan Romeijn: Our site, yeah, which I'm saying Dean Stone is a, it sees the whole valley that the line of sight technology of cellular, it, you know, has a great view of all the, of everything in the valley. So that's why it's a ...

Chair Kennedy: Okay, I need to ask it one more time. Is Dean Stone the only site that exists in the valley to provide cellular service? Is it the only one?

Bryan Romeijn: It's our only big site in the neighborhood, yes. As far as we have some fill in sites, we have a Van Buren one, we're working on a site over there by Reserve, and West Broadway and that kind of stuff, but as far as our main big picture site, that Dean Stone site is the ...

Chair Kennedy: I'm talking about the industry, not about you. I'm talking about the industry. Is it the only place, the only big site that is available in the valley? Is Dean Stone the only location that is available?

Bryan Romeijn: I would ... there's ... yes.

Chair Kennedy: There's none other. Okay, thank you.

Commissioner Carey: Mr. Romeijn, can I just ask one more question. My understanding is that you could use your current location where your tower is now though it would cost more. Is that right?

Bryan Romeijn: We don't have a long term lease agreement ...

Commissioner Carey: To get one would cost you more than where you ...

Bryan Romeijn: I don't think it's a financial issue, we just, we've tried with that landowner and that kind of stuff and basically our businesses do not meet, you know, I mean, we have not been able to come to terms and get a long term agreement. We had to go through some renegotiations a couple years ago. I think we're good for another five years up on top, which, you know, goes like that, especially when we have a 30 year lease and due to the fact that we need to add some more cellular antennas now, we need to work on some microwave, you know, now with the growth of the system. In the last six months, you know, it just, you know, it's gone wild with the amount of users on the system. These phones are becoming more than just a wireless phone, they're becoming primary phones for people, you know, there's just, you know, just not the salesman driving down the road anymore. People are using these as primary phones and we've got to have a long term business plan for the Missoula area.

Chair Kennedy: Can you speculate on what would happen should this not be granted.

Bryan Romeijn: We'd probably, I don't know what the next process is, but we'd sure like to, you know, locate up on the Line family. We don't, you know, we feel that that is a communication mountain and that, you know, just because of a loss of elevation and the loss of the other site, it's still a tower visual mountain and that's where we'd like to stay.

Chair Kennedy: I understand. The question is, what would be the effect on your business should this not be approved?

Bryan Romeijn: We would have to come up with either more sites down in the valley to cover the amount of capacity that that site up on top gave us or we really don't have a backup plan right now.

Commissioner Evans: Would there be an adverse effect on your business if this is refused.

Bryan Romeijn: Definitely. Kirk VanSoest, he's our regional technical manager.

Kirk VanSoest: Hi, I was hoping I could be able to maybe answer that a little better.

Chair Kennedy: Would you spell your name?

Kirk VanSoest: Yes, it's K-i-r-k Capital V-a-n Capital S-o-e-s-t. The reason that site is so important to us is our design and our network. It is the only site that can see down and bring our microwave up from Hamilton, Darby, all through the Bitterroot Valley. There really isn't an alternative site that can see that whole valley and also see into Missoula as well as it does. So, if that wasn't granted or we couldn't continue to stay up there because of our growth capacity, we would have

to redesign the whole network. We might have to go to U.S. West and see if they can design some circuits for us, that's why we're, we try to stay self-reliant on our microwave network is because when it goes out of service, we fix it ourselves, we bring it on line. We want to stay on line 24-hours a day, 7 days a week for our 911 network. In two years, the P-SAPS will be able to locate the caller within 200 feet, that is compliance with the FCC.

Commissioner Evans: What did you say, the P-SAPS?

Kirk VanSoest: Yeah, that's actually your 911 operators that will sit at a terminal and take the incoming 911 calls. They'll be able to look at a terminal, and this is FCC rule to be compliant, that we can locate the person that's dialing 911 with a wireless telephone. These site locations are pretty key on designing for the future so we can do all of these locations and to grow with the technology. I know Max touched on the amount of radio frequencies that are up on that little spot on top of the hill, is adversely affecting our growth, there's only so much spectrum that we can put these radios in, we can't design it anymore, because of the amount of RF up on the mountain top. That will allow us more reliable service as well as our redundancy that we build in the system. If we lose one of these sites with power outages with full backup generators we can run 20 days with no power. It sort of going along with our Y2K stuff that we're trying to complete. But we really want to build this network and have a good design so it stays operational at all times for anybody out there that needs to access or needs help in an emergency, that that site will be on line and able to handle the capacity. We've just exploded with people. I know the national average is 21% of saturation in the population in the United States. They are expecting it to double by 2001. Those again projections, but that's what we're seeing as growth in Montana. I just wanted to point those out and I hope that answers your question about how key the site location really is to our complete network. In the cost, it would cost to redesign the whole thing.

Chair Kennedy: Thank you, Mr. VanSoest. Is there any further questions? Barbara.

Commissioner Evans: One last question for you. How many years ahead do you feel that this power will be sufficient for.

Kirk VanSoest: It will be, it will stay there now. I'm not saying within 5 years that we're not going to again get more growth capacity which would mean we would go into different technologies, such as what we call sectorization. Right now we're in an Omni configuration which just broadcasts 360 degrees. It can only, in that design, handle so many radio frequencies before they start interfering with each other. Then we can go in and put sectors and add more, and I don't want to get, you know, way too technical, not that you guys don't understand, but there are things such as moving to the digital portion of the communication. So, with the two towers that we're planning on hopefully getting on line this year or next, I'm looking at a five year capacity at least before we're looking at a complete new system design. Again, that would be dictated by the customer growth, we didn't project real well on the last two years really how explosive this business has been.

Commissioner Evans: Thank you.

Chair Kennedy: Before we close the hearing, is there anyone else who would like to make a final comment. Then we'll close the public hearing and have some discussion about this. I reviewed the record pretty carefully, I have to tell you that I spent a lot of time on this. And one issue that came forward which I want to clarify at least for you the way I'm thinking, and that has to do with the approval of the radio tower that was done in 1992. It was the same process as Mr. Line said, because the Planning Board recommended that that tower not be approved, or not meeting the Comprehensive Plan. It was appealed to the Board of County Commissioners and they overturned the denial. We have a similar situation here where the Planning Commission has been consistent and so when they interpreted what the 1975 document said, as well as the 1990 document, they made findings and reached conclusions that indicated, in this case unanimously, that it was not something that should be constructed there. One thing that I note is that cellular service is relatively new, the way we have it right now. Obviously it's been around for a while, but the way we have it now is relatively new. And we notice that the towers around the landscape, not just in Missoula, but everywhere, are growing like hair on the dog, they really are springing up all over. And so there was no response, or no anticipation, in any Comprehensive Planning document about that kind of thing. How could there be? No one really knew. Particularly the people who were planning, no one could anticipate what the technology was going to bring us. And so what you have to do is you have to look at what the plan says and attempt, as the Supreme Court does often, what the meaning is in a dynamic today of a particular document. And I think that what the Planning Board did and I believe that they did it well. My concern, among others is, is that in a competitive market there are others, and there will be others, who will make similar requests and how will we address those. Well, hopefully, if we can develop consistency in how we address one, it will help in addressing any future considerations. And, with that I have to reflect back on what the County's involvement is in similar technology. We have, we obviously operate the 911 center and obviously, depending on where you are located, we have difficulty in making communication. It doesn't matter whether you're up Ninemile or Seeley Lake or, in the worst case, up Rock Creek. We always have communication problems. And some of the suggested answers are, of course, add additional facilities that allow us to have better coverage and one of the suggestions is, you build a tower that is tall enough you can reach anywhere. Well, there's practical and aesthetic considerations against doing that and we have to somehow live within the environment that we, where we are working and living. And we want to make reasonable compromise to meet the needs of the community from a strategic standpoint as well as an aesthetic standpoint. And I think that one point that we've worked on very hard in the '90's has been noticing that the growth in Missoula, we need to do something about not protecting from development so much, because that puts development in a negative term, but preserving existing conditions in as much as they are the things that attract development in the first place. And that is, of course, our surrounding landscape, which, in my mind, is the most beautiful in the United States. It's a natural landscape, it's not unnatural, and that's the, and the beauty of it says that we need to do what we can to, again, meet the needs of the community and not interfere with everyone else's needs to have that preserved in a way that they are proud of. So, I'm having difficulty with honoring your proposal. I looked at the findings and I read them very carefully. I agree with the findings. I read all of the conclusions very carefully and I agree with the conclusions. I just hope that my Board would support the Planning Board in denying this.

Commissioner Evans: May I ask a question?

Chair Kennedy: Barbara.



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Commissioner Evans: David, I don't see any, if the Planning Board ever heard this issue.

David Loomis: For the record, Commissioner, it was the Planning Staff. That's is correct.

Chair Kennedy: Planning Staff, I'm sorry.

Commissioner Evans: I would like to state for the record that I enjoy cell phones and I'm going to keep using my cell phone and I would certainly like to have the best coverage without dead spots that I can have. I also certainly, not being selfish, would like to have 911 have the best possible communications that they can have since people's lives depend on that. To quote Max, that is the area where the towers have been determined they should go and I don't see any reason to suddenly say, "Oops, we not going to do that anymore." The tower for Max and Sheila was approved in 1992 and determined that it did meet the Comprehensive Plan. I fail to see anything different about this one and I'm going to support granting this and hope that the other members of the Board will do so.

Commissioner Carey: First of all, I'd like to commend the Line family's stewardship of their land on that mountain, you've obviously worked very hard to preserve its aesthetic values for the whole community and I hope you continue to do so and know you will. But on the other hand I cannot, I want us to honor our Comprehensive Plan, I want it to mean something and I find, along with Commissioner Kennedy, that this does not, this proposal is not in compliance with the Comprehensive Plan. And therefore I'd make a motion to uphold staff's recommendation.

Chair Kennedy: Is there a second?

Commissioner Evans: No.

Chair Kennedy: I'll second the motion. Discussion? All those in favor signify by saying "Aye." This is for denial.

Commissioner Carey: Aye.

Chair Kennedy: Aye. Those opposed?

Commissioner Evans: No.

The motion to deny the appeal carried on a vote of 2-1 (Commissioner Evans opposed).

Chair Kennedy: Thank you very much for your patience. Is there any other business to come before the Board? Then we're adjourned.

There being no further business to come before the Board, the Commissioners were in recess at 2:38 p.m.

THURSDAY, SEPTEMBER 16, 1999

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

ADMINISTRATIVE MEETING

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

Resolution – The Commissioners signed Resolution No. 99-063, a Resolution of Intent to rezone property described as a portion of Tract A2-B of COS 4264, from C-I1 (light industrial) to C-P1 (public lands) for the Missoula Bible Church.

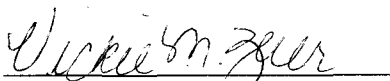
Amendment to Task Order – Chair Kennedy signed an amendment to a Task Order with the Montana Department of Public Health and Human Services, changing the maximum amount payable for services to \$336,530.00. The Amendment was returned to the Health Department for further handling.


Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with Thomas R. Carter dba Technical Contracting to provide operation and maintenance services for the El Mar Estates and New Meadows water system on a month-to-month basis. Compensation shall be \$4,765.83 per month, increased to \$4,885.00 per month on December 15, 1999, based on satisfactory performance the prior three months. Contract may be terminated at any time by either party by giving written notice at least one day prior to the date of intended termination.

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

FRIDAY, SEPTEMBER 17, 1999

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


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, SEPTEMBER 20, 1999

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, the Commissioners participated in the contract signing, ribbon cutting and tour of the new Missoula Correctional Services facility on Mullan Road.

Claims List -- Commissioners Evans and Kennedy signed the Claims List, dated September 17, 1999, batch numbers 165, 175, 176, 177 and 179, with a grand total of \$154,213.70; and two Claims Lists, dated September 20, 1999, batch number 186 with a grand total of \$597.60, and batch number 178, with a grand total of \$12,802.00. The Claims Lists were returned to the Accounting Department.

Professional Services Contract -- The Commissioners signed a Professional Services Contract with Higgins Consulting to provide site safety and health services for the Health Department's Household Hazardous Waste Collection Event on September 16, 17, and 18, 1999. Compensation shall be \$600.00. The Contract was returned to the Health Department for further signatures and handling.

TUESDAY, SEPTEMBER 21, 1999

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

Payroll Transmittal -- The Commissioners signed a Payroll Transmittal for Pay Period 18, with a total Missoula County payroll of \$742,045.42. The Transmittal was returned to the Auditor's Office.

ADMINISTRATIVE MEETING

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

Memorandum of Agreement -- The Commissioners signed a Memorandum of Agreement with the Lolo Community Council for provision of services to advance and promote the interests and welfare of residents of the Lolo community. Value of the Agreement is up to \$1,000.00. Duration of the Agreement is from July 1, 1999 through June 30, 2000.

Agreement -- The Commissioners signed an Agreement with the Knie Group, Mark Denton, the Dobbins, DeGuire and Tucker Pension Plan; and Jack Green, stating that Grant Creek Heights, Inc. is created to take title to described properties in this agreement, which resolves issues and settles claims regarding the Gleneagle Subdivision at Grantland. Grant Creek Heights, Inc and the Knie Group agree to purchase all of Missoula County's right, title and interest in the Gleneagle Subdivision and the 79 acres adjacent to the subdivision for \$480,000.00.

Other items included:

- 1) The Commissioners approved a proposal to participate in a project involving RSID 901 in developing a plan for achieving "livability," working with the University of Montana.
- 2) The Commissioners approved allocation of funds from the County Park budget to replace the irrigation pump at Fort Missoula with a submersible pump, at a cost of \$8,276.83 from the Park Board contingency fund and the Park Board capital fund.
- 3) The Commissioners approved expenditure of change order funds to construct a maintenance building at the new jail site. Cost will be \$45,418.00.
- 4) The Commissioners approved a modification of the space needs proposal to relocate the Surveyor to the second floor of the Annex, starting with the GIS/Mapping offices.

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

WEDNESDAY, SEPTEMBER 22, 1999

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

Claims List -- Commissioners Kennedy and Evans signed the Claims List, dated September 21, 1999, batch numbers 180, 184, 185, 188 and 189, with a grand total of \$91,388.33. The Claims List was returned to the Accounting Department.

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Sonya Sepulveda (for Gillig Corp.) as principal for Warrant #53745, issued 8/11/99 on the Missoula County Urban Transportation Fund in the amount of \$668.82, not received in the mail.

Resolution -- The Commissioners signed Resolution No. 99-064, a Resolution creating Rural Special Improvement District #8466, to relocate a railroad crossing so that it is at a safer, 90 degree angle over the tracks in Huson, MT.

PUBLIC MEETING -- September 22, 1999

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

Public Comment

None

Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$264,308.93. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Bid Award: Sidewalks and Walkways (South Ave., North Ave., Humble Drive, 7th Street) – MDT Project (Surveyor) – (Postponed)

The Bid Award has been postponed to a date to be determined later.

Consideration: Resolution for Renewal of Anticipation Notes (Capital Improvements and Detention Center)

Michael Sehestedt stated this authorizes the sale of the Anticipation Notes and allows for the preparation of necessary documents. Notice will be published that bids are being accepted.

Commissioner Evans moved that the Board of County Commissioners approve the resolution authorizing the sale of tax and revenue anticipation notes, and authorize the Chair of the Board of County Commissioners to sign all documents necessary. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing: Proposed Amendment to Urban Area Comp Plan (Southside Riverfront Area) – (Postponed)

The Hearing has been postponed to a date to be determined later.

There being no further business to come before the Board, the Commissioners were in recess at 1:35 p.m.

Resolution – Following the Public Meeting, Chair Kennedy signed Resolution No. 99-065, a resolution relating to two million six hundred thousand dollars (\$2,600,000) tax and revenue anticipation notes, series 1999; authorizing the issuance and calling for the public sale thereof. Bids for the purchase of the notes must be received by October 20, 1999 at 10:00 am. Sale of the notes will be to the lowest and most responsive bidder.

THURSDAY, SEPTEMBER 23, 1999

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.

Claims List -- Commissioners Evans and Carey signed the Claims List, dated September 23, 1990, batch numbers 200, 191, 193, 194, 195, 196 and 197, with a grand total of \$210,893.51. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Memorandums of Agreement – The Commissioners signed two Memorandums of Agreement:

1. with the Human Resource Council District XI, Supplemental Security Income Transition Program (SSIT), to purchase basic needs assistance for indigent residents of Missoula County. Value of the Agreement is \$189,371.00. Duration of the Agreement is July 1, 1999 through June 30, 2000.
2. with Montana Legal Services: Family Law Advice Clinic, to purchase legal assistance for clients who cannot access the legal system because of economic barriers. Value of the Agreement is \$4,925.00. Duration of the Agreement is July 1, 1999 through June 30, 2000.

Resolution – The Commissioners signed Resolution 99-066, a resolution of intent to consolidate the offices of the Clerk of District Court and the Clerk and Recorder/Treasurer. A Public Hearing will be held on October 13, 1999 at 1:30 pm in Room 201 of the Missoula County Courthouse Annex regarding this issue.

Resolution – The Commissioners signed Resolution No. 99-067, requiring the Montana Department of Transportation to assume maintenance responsibilities for Secondary Route Number 474 (Pulp Mill Road), Secondary Route Number 263 (Mullan Road), and Secondary Route Number 507 (From the Missoula/Mineral Co. line easterly to the Junction of I-90 at Petty Creek) effective July 1, 2000.

Professional Services Contract – The Commissioners signed a Professional Services Contract with the Psychology Department at the University of Montana for the Access to Therapy Program. Performance schedule is July 1, 1999 through June 30, 2000. Compensation shall be a maximum of \$11,200.00.

Forest Products Sale Permit – Acting Chairman Barbara Evans signed a Forest Products Sale Permit from the USDA Forest Service for timber harvest along the Blue Mountain Road right-of-way. The Permit was returned to Horace Brown, County Surveyor, for further handling.

Other items included:

- 1) The Commissioners approved a new "splash" screen for the County computer login procedure, in order to discourage hacking or employee misuse of the system. The information was returned to Sharon Tandberg in Information Systems.

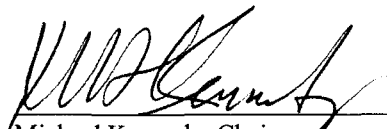
- 2) The Commissioners approved a recommendation from Michael Sehestedt, Deputy County Attorney, to request the Department of Revenue to accept Mr. Leslie Bennett's request to file late for a low income tax break. The paperwork was returned to Mike Sehestedt for further handling.
- 3) The Commissioners denied a request from Mike Marbut of Grizzly Auto to name a cul-de-sac in the Missoula Development Park Grizzly Court. They determined that the naming should be consistent with the bird theme present in the Park.

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

FRIDAY, SEPTEMBER 24, 1999

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


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, SEPTEMBER 27, 1999

The Board of County Commissioners did not meet in regular session; Commissioner Carey was in Kalispell attending the MACo Annual Conference from September 26-29, and Commissioner Kennedy was on vacation September 27-29.

Indemnity Bond – Acting Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Ross Chaney as principal for Warrant #256898 issued 9/10/99 on the Missoula County Payroll Fund in the amount of \$191.87 now unable to be found.

Application for Issuance of Replacement Warrant – Acting Chairman Evans approved an Application for Issuance of Replacement Warrant naming Kohler's Sprinkler System as principal for Warrant #348591, issued 6/4/99 on the Missoula County Park Maintenance Fund in the amount of \$222.40, not received in the mail.

TUESDAY, SEPTEMBER 28, 1999

The Board of County Commissioners did not meet in regular session.

WEDNESDAY, SEPTEMBER 29, 1999

The Board of County Commissioners did not meet in regular session.

Indemnity Bond – Acting Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Robert Burmaster as principal for Warrant #64571 issued 5/28/99 on the Missoula County MCPS Payroll Fund in the amount of \$310.87 now unable to be found.

The Weekly Public Meeting was canceled as two of the Commissioners were out of town.

THURSDAY, SEPTEMBER 30, 1999

The Board of County Commissioners met in regular session; all three members were present. Commissioner Kennedy attended the Human Rights Conference Kickoff at the Holiday Inn after work.

ADMINISTRATIVE MEETING

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

Payroll Authorization Form – The Commissioners signed a Payroll Authorization Form for Bill Silverman, OEM Coordinator, changing his salary to \$14.69 per hour. The form was returned to Bill Silverman in OEM for further handling.

Bid Award – The Commissioners awarded a bid for asphaltic plant mix to Jensen Paving Company, as per the recommendation of County Engineer Mike Moderie, in the amount of \$37,900.00, for FY2000 roadway maintenance done by the County Road Department.

Resolution – The Commissioners signed Resolution No. 99-068, a resolution authorizing commitment of funds and environmental review certification on behalf of Human Resource Council for a Montana Department of Commerce Home Investment Partnership Program Application. If selected, Missoula County will provide \$10,000 of local CDBG funding for the project.

Resolution – The Commissioners signed Resolution No. 99-069, a resolution authorizing the submission of application and agreement to certifications for application and commitment of funds for Montana Department of Commerce Home Investment Partnership Program on behalf of Opportunity Resources, Inc. If selected, Missoula County will provide \$10,000 of local CDBG funding for the project.

Declaration – The Commissioners signed a Declaration that the Grant Creek Water Users Association, Inc. is purchasing the working assets of the Grant Creek Waterworks, and that the Grant Creek Water Users Association, Inc. shall operate the water system in accordance with all applicable health and public service commission requirements.

Budget Transfer – The Commissioners signed two Budget Transfers for the Health Department:

1. in the amount of \$2,000.00 for the Social Norms DOT Contract.
2. in the amount of \$8,000.00 for the Social Norms DOT Contract.

Other items included:

- 1) The Commissioners approved a request to re-design the final plat for Lots 4, 9 and 10, Block 13, Missoula Development Park, Phase 2, to reflect a design improvement since preliminary plat approval occurred.
- 2) The Commissioners signed an exemption affidavit to relocate common boundaries for Lots 2, 3, 10 and 11 of Block 4, Missoula Development Park, Phase I and to create a new lot for Park 12 within Lots 1A and 1B of Block 4.
- 3) The Commissioners signed an exemption affidavit to relocate common boundaries for Lots 1, 2, and 3 of Block 8, Missoula Development Park, Phase 2; and Lot 2 and Park 9 of Block 10, Missoula Development Park, Phase 2. The Plat will be called Amended Plat of Park, Phase 2B, the Amended Plat of Lots 1-3, Block 8 and Lot 2, Block 10 and Park 9 of Missoula Development Park, Phase 2.

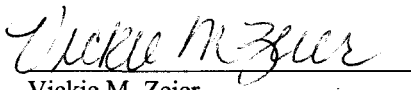
The information was returned to Barb Martens, Projects Coordinator, for further handling.

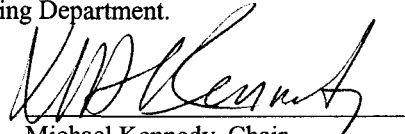
The minutes of the Administrative Meeting are on file in the Commissioners Office.

FRIDAY, OCTOBER 1, 1999

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

Claims List -- Commissioners Evans and Carey signed two Claims Lists, dated September 30, 1999, batch numbers 201, 203, 204, 205, 210, 212 and 215, with a grand total of \$98,279.84, and batch number 207, with a grand total of \$30,377.84. The Claims Lists were returned to the Accounting Department.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, OCTOBER 4, 1999

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

Claims List -- Commissioners Evans and Kennedy signed the Claims List, dated October 1, 1999, batch numbers 208, 213, 214, 216 and 219, with a grand total of \$221,844.20. The Claims List was returned to the Accounting Department.

Monthly Report -- Chair Kennedy signed the Report of the Clerk of District Court, Kathleen Breuer, for the month of September, 1999.

Amended Development Agreement -- Commissioners Kennedy and Carey signed (Commissioner Evans abstained) an Amended Development Agreement for High Country Addition, establishing primary travel corridor standards, no parking signs, and a completion date for the above-mentioned items prior to October 30, 2001.

Log Purchase Agreement -- Chair Kennedy signed a Log Purchase Agreement with Stimson Lumber Company for sale of logs from the Blue Mountain Road Project. Effective date is September 30, 1999, and termination date is October 20, 1999.

Employment Agreement -- The Commissioners signed an Employment Agreement with Ann Mary Dussault for the position of Chief Administrative Officer. Contract commences on or about December 1, 1999, and is subject to review on July 1, 2000 and every three years thereafter. Annual salary shall be \$68,500.00, with a 5% salary increase effective the first full pay period in FY2001.

Contract -- The Commissioners signed a Contract with Mark Hebert Trucking to haul 5-6 standard logging truck loads of logs from Blue Mountain Road to Stimson Lumber in Bonner. Estimated total cost will be \$750.00. Contract commences on October 10, 1999 and must be completed before October 31, 1999.

Renewal of Memorandum of Agreement -- The Commissioners signed Missoula County's signature page for the Renewal of Memorandum of Agreement between the State of Montana, Flathead County, Missoula County, Sanders County, City of Hot Springs, City of Ronan, Town of St. Ignatius and the Confederated Salish and Kootenai Tribes of the Flathead Nation, pertaining to Public Law 280 jurisdiction on the Flathead Reservation. The document was returned to Sarah Bond, Assistant Attorney General, for further handling.

TUESDAY, OCTOBER 5, 1999

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

ADMINISTRATIVE MEETING

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

Memorandum of Agreement -- The Commissioners signed a Memorandum of Agreement with the Missoula Children's Theater to sponsor a Montana Arts Council Cultural Trust Project Grant for MCT's Rural Montana Tour Project. Value of the Agreement is \$32,000.00. Duration of the Agreement is July 1, 1999 through June 30, 2001.

Resolution -- The Commissioners signed Resolution No. 99-070, a Resolution of intention relating to Rural Special Improvement District #8467, to undertake certain local improvements and finance the costs thereof for paving in the Double Arrow Subdivision Phase II in Seeley Lake, Missoula County, Montana. Total estimated costs of the improvements are \$234,000.00. The hearing date was set for October 27, 1999 in Room 201 of the Courthouse Annex at 1:30 pm.

Use Agreement -- The Commissioners signed a Use Agreement with the Missoula All-Maggots Rugby Football Club for the development of a rugby field at the Fort Missoula Recreation Complex. In 1989, the Club signed a 10-year agreement with the County and contributed \$5,000.00 for this purpose. This agreement shall be in force for 10 years, unless terminated in writing by either party. For 1999-2000, the user fee will be \$1,500.00.

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

WEDNESDAY, OCTOBER 6, 1999

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Carey was out of the office all day due to illness.

Claims List -- Commissioners Evans and Kennedy signed the Claims List, dated October 5, 1999, batch numbers 220, 223 and 224, with a grand total of \$79,246.50. The Claims List was returned to the Accounting Department.

Monthly Report -- Chair Kennedy signed the Monthly Reconciliation Report for Justice Court 2, Karen Orzech, for the month of September, 1999.

Agreement -- Chair Kennedy signed an Agreement with the Montana Department of Environmental Quality for the purpose of implementing a Non-Point Source Project on Elk Creek. Performance schedule is August 9, 1999 through June 30, 2001. Compensation shall be up to \$32,000.00. The Agreement was forwarded to DEQ in Helena.

PUBLIC MEETING -- October 6, 1999

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioner Barbara Evans and Chief Civil Attorney Michael Sehestedt. Commissioner Bill Carey was not present as he was ill.

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$429,748.38. Chair Kennedy seconded the motion. The motion carried on a vote of 2-0.

Hearing: Request to Abandon a Portion of Harlequin Loop -- Missoula Development Park

This is a petition to abandon "Harlequin Loop from the southerly right of way of Expressway to the northerly boundary of Lot 3, Block 13 of Missoula Development Park Phase 2, located in Section 1, Township 13 North, Range 20 West, Missoula County, Montana."

The reasons for the request are as follows: 1. Re-configuration and relocation of lot lines.

Barb Martens, Projects Coordinator, presented the staff report. She stated the proposal to vacate Harlequin Loop is to facilitate the change in design from a loop street to a cul-de-sac street.

Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Chair Kennedy stated the process for this action would require a site visit by the County Surveyor and one of the County Commissioners. That visit will be scheduled and a decision will be made not before October 20, 1999, possibly later pending the sale of the property involved.

There being no further business to come before the Board, the Commissioners were in recess at 1:32 p.m.

THURSDAY, OCTOBER 7, 1999

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

Claims List -- The Commissioners signed the Claims List, dated October 7, 1999, batch number 228, with a grand total of \$9,000.00. The Claims List was returned to the Accounting Department.

Payroll Transmittal -- The Commissioners signed a Payroll Transmittal for Pay Period 19, with a total Missoula County payroll of \$667,907.07. The document was returned to the Auditor's Office.

ADMINISTRATIVE MEETING

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

Task Order -- Chair Kennedy signed a Task Order with Montana Department of Public Health and Human Services to conduct a childhood lead poisoning prevention program. Term of the Task Order is July 1, 1999 through June 30, 2000. Compensation shall be a maximum of \$10,800.00. The Task Order was returned to the Health Department for further handling.

Task Order -- Chair Kennedy signed a Task Order with Montana Department of Public Health and Human Services to sponsor a nurse in the Office of Public Assistance through the FAIM Program to counsel parents on access/use of healthcare. Performance schedule is July 1, 1999 through June 30, 2000. Maximum total compensation is \$40,000.00. The Task Order was returned to the Health Department for further handling.

Memorandums of Agreement -- The Commissioners signed two Memorandums of Agreement:

1. with Western Montana Mental Health Center for provision of drug treatment services at Turning Point. Value of the Agreement is \$76,900.00. Duration of the Agreement is July 1, 1999 through June 30, 2000.
2. with Missoula Indian Center for drug treatment services. Value of the Agreement is \$9,504.00. Duration of the Agreement is July 1, 1999 through June 30, 2000.

Resolution -- The Commissioners signed Resolution No. 99-071, a budget amendment for the County Attorney's Office, in the amount of \$25,013.00.

Certifications of Acceptance – The Commissioners signed 6 Certifications of Acceptance for County Maintenance:

1. Expressway, with limits of acceptance of 2.395 miles
2. Airway Blvd., with limits of acceptance of .487 miles
3. Kelsey Ct., with limits of acceptance of .217 miles
4. Jake Ct., with limits of acceptance of .036 miles
5. Christian Dr., with limits of acceptance of .372 miles
6. Cam Ct., with limits of acceptance of .060 miles

All Certifications were returned to the County Surveyor's Office for further handling.

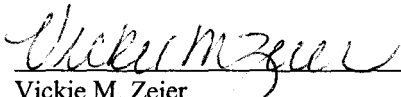
Other items included:

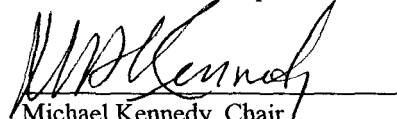
- 1) The Commissioners approved a request from GE Capital for a refund because property was reported and taxes assessed in error. The information was forwarded to Vickie Zeier, Clerk and Recorder/Treasurer for further handling.

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

FRIDAY, OCTOBER 8, 1999

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


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, OCTOBER 11, 1999

The Courthouse was closed for the Columbus Day Observed holiday.

TUESDAY, OCTOBER 12, 1999

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

Claims List – The Commissioners signed the Claims List, dated October 12, 1999, batch number 217, with a grand total of \$103,357.97. Commissioners Kennedy and Evans signed the Claims Lists, dated October 12, 1999, batch number 226, with a grand total of \$2,817.30; batch number 227, with a grand total of \$52,480.93; and batch number 236, with a grand total of \$34,643.75. The Claims Lists were returned to the Accounting Department.

Monthly Report – Chair Kennedy examined, approved, and ordered filed the Report of the Sheriff, Douglas Chase, for the month ending September 30, 1999.

ADMINISTRATIVE MEETING

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

Resolution – The Commissioners signed Resolution No. 99-072, a budget amendment for the Historical Museum at Fort Missoula in the amount of \$19,429.00.

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with the Art Museum of Missoula for a Cultural Trust Project to expand the Museum's Contemporary Indian Art Collection. Value of the Agreement is up to \$11,000.00. Duration of the Agreement is July 1, 1999 through June 30, 2001.

Agreement – The Commissioners signed an Agreement with the Missoula Development Authority for the County's purchase of approximately 50,000 cubic yards of gravel at \$0.75 per yard from the Missoula Development Park gravel pit. Term of the Agreement is 12 months from this date, with one-year extensions available if agreeable to both parties, if necessary.

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

WEDNESDAY, OCTOBER 13, 1999

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

PUBLIC MEETING – October 13, 1999

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioner Barbara Evans, Commissioner Bill Carey, County Clerk & Recorder/Treasurer Vickie Zeier and Chief Civil Attorney Michael Sehestedt. Mike Moderie, Project Engineer, Missoula County Road Department, attended the meeting for County Surveyor Horace Brown who was on vacation.

Public Comment

Reed Smith of Frenchtown commented on the role of the County Commissioners as far as the Yellowstone Pipe Line is concerned. He understood they were working with the Forest Service, having input to that process, which will take care of the Forest Service Land, but nobody is going to take care of the private land. What comes out of the Forest Service EIS

only applies to Forest Service Land. There is a lot of private land that will be disturbed and will have a pipeline running through it. The pipeline also goes through the Missoula aquifer, which is mostly on private land. As it stands now, he understood the Commissioners position was they did not think they had authority to do anything on this. He felt they should share some information on that position with the public and let them know why they do not feel they have any authority or who does have authority.

Chair Kennedy invited Mr. Smith to meet with the Commissioners after today's meeting and they will inform him of what has been done.

Commissioner Evans stated she has sent Mr. Smith a letter regarding the Yellowstone Pipe Line.

Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$202,299.95. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Presentation: Life Saving Award

Sheriff Doug Chase presented an award to Christine Scheffer. She is credited with saving the life of 3-year-old Jordon Corwin. The boy was found unresponsive in a pool at Lolo Hot Springs. She pulled him from the water, administered CPR and was successful in resuscitating him.

On August 23, 1999, at approximately 7:15 p.m., Deputy Kelly Keintz and Sergeant Willis Hintz were dispatched to Lolo Hot Springs in reference to a child drowning in the pool. CPR was in progress. Christine Scheffer said she was Jordon Corwin's aunt. She saw the boy in the pool and he apparently had drown. Christine grabbed Jordon out of the pool and started CPR. When he became responsive, she stopped CPR. Life Flight personnel, as well as Deputy Keintz and Sergeant Hintz, said they believed Christine's action saved the life of Jordon. Christine's only response after being told she probably saved Jordon's life was: "I guess attending all those CPR training courses finally paid off."

Sheriff Chase stated Christine's response was correct, there is no higher calling in life than to save the life of another. He presented her a plaque that read: *Certificate of Appreciation. The Missoula County Sheriff's Department proudly presents this award to Christine Scheffer in grateful appreciation of your calm response and prompt actions under intense stress at Lolo Hot Springs on August 23, 1999. Your rescue of 3-year-old Jordon Corwin from the pool and administration of CPR are credited with saving his life.*

Christine Scheffer introduced Jordon Corwin and her family, including her grandparents, her aunt and uncle and her sister, Julie Corwin, Jordon's mother.

Hearing: Petition to Alter and Abandon Curlew Loop, Missoula Development Park Phase II

Barb Martens, Projects Coordinator, presented the staff report.

This is a petition to alter and abandon "Curlew Loop located in the subdivision known as the Missoula Development Park Phase 2 in Section 1, Township 13 North, Range 20 West, PMM, Missoula County, Montana. As a part of the filing of the subdivision known as the Missoula Development Park Phase 2B, the road right-of-way would be altered and reconfigured to abandon the loop portion of the road and to construct two cul-de-sacs within the relocated right-of-way."

The reasons for the request are as follows:

1. It allows for the relocation of lot lines to accommodate the needs of the landowners.
2. The landowners will be better served by the new configuration.
3. The cost of the right of way has been paid.
4. The cost of relocating the roadway is being borne by the landowners.

Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Chair Kennedy stated the process for this procedure includes a site visit by one of the County Commissioner and the County Surveyor. They will make a formal recommendation to the Board as to this action and the Board will make a decision. No date was set for the final decision but it would be noticed when a date was set.

Hearing: Intent to Consolidate the Offices of Clerk of District Court and Clerk & Recorder/Treasurer

Chair Kennedy: This is a hearing on the intent to consolidate the offices of Clerk of District Court to the Clerk & Recorder/Treasurer. And what I would do at the outset is say that in August, after considerable study, we issued a comment which I believe most of you have had the advantage of seeing, giving the position of the Board on why we chose to ask comment on this as a proposal. And I will only read the last paragraph, because that's the most important one because it has to do with why we're meeting today. "In accordance with governing statutes, we will begin the process by approving a resolution of intent to consolidate the offices (by the way, which we have done) and then hold a public hearing prior to taking any decision on the issue. We invite any and all comments and will take them into account when the decision is reached." According to statute, should we, because we're engaged on this process, we're required by law to act within five days after the hearing, within that period. After consulting with counsel, that period is at the end of the business day on next Monday, so we will take a decision before that time and probably it will be on Monday. So with that, what I'd ask is to open the hearing and to ask anyone who wishes to comment to come forward and we'd like to hear what you have to say. But before we do that, I'd ask how many people are here to testify? May I ask that? Okay, so we see about a half a dozen, which means that we'll have adequate time and we won't limit the time that you have based on the numbers of hands that I saw. So please come forward, one at a time, identify yourselves for record and we'd like very much to hear what you have to say.

Doug Chase: Missoula County Sheriff. I'm deeply saddened by this turn of events. Saddened for Kade, having to experience this, sorry for her family having to see this occurring. I'm extremely concerned about the loss of an elected position in government. County governments, by and large, consist of elected heads for major departments. I believe this is as it should be and I suspect tens of thousands of Missoula residents agree. The Missoulain article is correct, and I have no reason to doubt it, it shows that 46 counties agree that the Clerk of Court should remain an elected official. As a former Reserve Deputy, an employee of our organization, Kade was a valued employee. One of things I noted about Kade Breuer is that she always, and I emphasize always, in her role as Clerk of the Court, is in before 8:00 a.m. and leaves after 5:00 p.m. She gives the taxpayer their absolute money's worth. Kade and our department, especially the detention division, do a fair amount of interacting on a daily basis. We have found Kade and her staff always to bend over backwards to assist us in these needs. While I do not know all the facts associated with this matter, I cannot conceive that a better avenue of resolution can't occur. Thank you.

Chair Kennedy: Thank you, Sheriff. Next person please.

Nancy Sweeney: Commissioners Kennedy, Carey and Evans, my name is Nancy Sweeney and I appear here today as president of the Montana Clerks of Court Association as a fellow local elected official. Now, it's not our intent to appear at this hearing simply as bureaucrats participating for the sake of some self-sense of preservation of our office. It is true that if counties continue to consolidate local government offices, all Clerks of Court may cease to exist as independently elected offices, but this is true for many of our local elected officials including your sheriff, here. The Montana Association of Clerks of District Court believe in and support the traditional form of county government. Our local government offices are constitutionally mandated offices. Offices that can trace their creation to the 1889 Montana Constitution, which by the way, I also believe in and support. I believe in our government and I oppose any change that will reduce government accountability to the citizens of Montana. The traditional form of government provides the best possible citizen access and governmental accountability in the most economical manner. The Montana Association of Clerks of District Court does not believe that consolidation of the Clerk of Court's office is in the best interest of Missoula County. The mission of every county government is to provide the highest quality service to its citizens at the lowest possible cost. Least there's no doubt in my mind that a local government elected official is the most cost efficient way to provide an administrator, but I question the ability of any administrator to juggle three separate responsibilities and continue to be informed and responsive to the needs of the citizens. Counties simply cannot afford to delegate the duties of their elected officials to anyone other than the individual office holder. Every county needs someone intimately knowledgeable in the step by step operation of the specific office and empowered to implement procedures that will ensure that sound judgements are made for the overall good of that office. It may seem efficient to consolidate government but unlike a corporation, government is responsible concurrently to all segments of society. What at first may seem efficient turns out to be unresponsive in practice. The traditional form of government, and that's with 13 independently elected local government officials, provides the best possible citizen access and government accountability in the most economical manner. This traditional structure allows all elected officials to function as equal advocates for the specific needs of their offices, balanced of course by the budgetary authority given to the County Commissioners. Consolidation of large county offices has the overall effect of changing this traditional form of government. It creates a bureaucracy of appointed department heads reporting to a central decision-maker and this further removes the public from the elected official who is accountable for the office. The best procedure for changing the existing form of government should involve the will of the voters. The local government review process provides voters with the opportunity to approve of any change in existing local government structure. Many Montana counties voted to undertake the statutory review process just a few years ago, but most voters, and I would remind you including Missoula county voters, declined to alter the traditional form of government. It is poor public policy, to say the least, for this Commission to use this consolidation process to change Missoula's form of government, when your voters rejected a change in the traditional form of government a few short years ago. The elected officials I had the privilege to work with are hard working professionals willing to work long hours for modest compensation in comparison to the skills necessary to successfully provide services to the public. Local government offices are dedicated to being responsive to the public and the electorate is allowed to judge our performance every election cycle. I am proud to be an independently elected Clerk of Court. I know almost every aspect of my office and I'm dedicated to providing the best possible service in the most economical manner. I don't know Missoula County's present Clerk & Recorder/Treasurer, Vickie Zeier, but it's impossible for me to believe that any person could know every aspect of three major county offices. It has taken me five years to become proficient as an administrator in the Clerk of Court's office, and I might add that's in addition to the 15 years that I spent in the office working in other capacities. No matter how capable Mrs. Zeier is, she will have to rely upon the observations and opinions of others to formulate policy and procedure for all of her offices. Missoula County's intent to enter into an interlocal agreement between the judges and the Clerk & Recorder/Treasurer only increases our concerns about this consolidation. The Clerk of Court's office should be separate from the judges. One of the main functions of the office is to provide access to the courts independent of the judges. A constitutional scholar informed me that the very reason that the constitution had set up the Clerk of Court's office separate from the judiciary was because at that time the federal courts were not being responsive to the individual needs. I don't think we want to go backwards on this. The Clerk of Court's office provides access to all court documents and proceedings unless such access is restricted by law. This separation of responsibilities is necessary to insure that the judiciary is not operating in secrecy and that their actions are subject to public review. The interlocal agreement blurs the line between the executive and judicial branches of local government. The proposed interlocal agreement between the judges and the Clerk & Recorder/Treasurer will cause confusion within the county and fragment the local elected official's ability to administer each of her offices. A judge's duty is to determine the facts in any given circumstance and protect the rights of individuals as provided by the law, regardless of the costs. What happens when the judges decide that additional personnel or technology is necessary to provide timely access to the courts. Will Mrs. Zeier be bound to implement the desires of the judges at the detriment of the needs of her other offices? It is difficult for me to really believe that this Commission would want the judges to become more involved in the operation of another office. Missoula County is inviting the judges to exercise greater authority over County resources and personnel. The Missoula County Clerk of Court's office has been instrumental in assisting the Clerks of Court Association in their legislative activities. The legislative committee of the Montana Association of Clerks of District Court has been very active in proposing legislation to improve the Clerks of Court's offices and in testifying against unfunded mandates to local government. Will Mrs. Zeier be able to find the time to run her three complex offices and continue to assist the association in protecting her office and county interests? State law forbids governmental employees, that is other than elected officials, from participating in this manner so that responsibility certainly couldn't be delegated to the appointed department head that would know the procedures and laws of the office. I

have served as Chair of the Clerks of Court Association Legislative Committee for the past three legislative sessions and I can say we would sincerely miss Missoula's assistance in our legislative efforts. Over the past six years and three legislative sessions, I have observed state and federal government turning over more responsibilities to local government without the necessary funding to carry out those responsibilities. The trend has not only produced more unfunded mandates but local governments have seen a reduction in the financial resources necessary to fund even existing services. Local governments need more voices to educate the public on local government needs, not less. More voices to identify and resist unfunded mandates, not less. More voices to interact with the state and federal governments to obtain necessary funding to provide basic services to the public. A perfect example of how Mrs. Breuer has been involved with our association deals with two components of our judicial management system that was developed by the Supreme Court administrator's office. One was to provide detailed child support information to the state child support enforcement division, they had been mandated to implement what is called a Central State Registry. The Supreme Court said that they could develop a component that would allow the information to be input and then transferred to this Central Case Registry, which was all good and well but it did not take into account when one state agency was promising another state agency they could provide that task that the counties, the local government, would have to find the personnel available to input that information. In negotiations, when the Clerks of Court Association, assisted with Mrs. Breuer's help, contacted these other agencies and told them that we were opposed to providing this, that we had calculated the time that it would take on each individual case to input this information, that we were unwilling to do that regardless if that component was available there, and no one had asked the local government if they were willing to take on what amounted to an unfunded mandate. They were surprised to find that out and in our negotiations we were able to obtain federal money to help fund the entry of each and every statistical. Without our input, we would have been doing that job because one state agency told another state agency that it was fine, that they could get this service at no cost. A similar incident happened with input on criminal judgments. The state developed a component that would require us to put in each and every condition of a criminal judgment and in turn this information then would be supplied to the State ID Bureau. Of course the Court Administrator's office, being another state agency, assured the ID Bureau when they took the grant money for development of this program, that a program could be written and this program could happen with the Clerks of Court inputting all of this information. We're still opposed to that, that's not happening at this point because it's another unfunded mandate that would probably, in my small office in Lewis and Clark County, would require another person to input all this information. You need another voice there to tell the state agencies enough is enough, if you demand more services for us, you need to compensate the counties. The Clerks of Court Association will not address any of the communication problems that may have prompted this consolidation. What we do believe is that effectively changing the form of local government is not a proper solution to an individual problem. Our association urges Missoula County Commissioners to carefully consider the detriments of this consolidation as well as the benefits. Will this consolidation create more problems than the one it will solve? How will the new Clerk & Recorder/Treasurer/Clerk of District Court set priorities when faced with the demands of the court and the increasing limited financial resources of the county. The Montana Association of Clerks of District Court represent that Missoula's consolidation will cost more than it will save, both financially and in terms of public confidence. I thank all of the County Commission individually for allowing us this opportunity to present our views.

Chair Kennedy: Thank you very much Ms. Sweeney. Next person please.

Laurie Maloney: Mr. Chairman, members of the Commission, my name is Laurie Maloney. I am the Clerk of the District Court in Butte/Silver Bow County, a past president of the Montana Clerks of District Court Association and a current member of the District Court funding committee that was established by the last legislature to look into court financing. The duties of the Clerk of the District Court's office are many and are mandated by state law. That doesn't help the counties any, because the county has to fund what the state is telling us that we have to do. However, this office, the Clerk of the District Court, has served as a direct link between the public and the courts in the State of Montana since approximately 1867 and has historically been an elected office. It maintains the check and balance system for the courts. I'm sure as County Commissioners you hate those words, checks and balance, because everybody throws them at you. But it's something that our public want. This office acts as a safeguard against the courts having absolute control over what gets filed or what doesn't get filed, what records are kept, what records are destroyed. I feel very strongly that by removing the elected status of the position of Clerk of District Court, that you as a commission are taking away the rights of the citizens of Missoula County to vote for the person of their choice. As an elected official, we are sworn servants, each and every one of us, to the people who elected us, not the judges, not the attorneys, they don't tell us what to do. We can work with them, but the only people that we really have to answer to are the people that put us in our positions. We take an oath of office to uphold the dictates of this law and sometimes that means that we do have to take a stand on procedures that is contrary to what the judges or attorneys want. Consequently, we are beholden only to do the job that we were elected to do, to run the office responsibly and with accountability to our taxpayers. Every ten years each local government must elect a study commission to evaluate the county or city government. In the last study commission in Missoula County the consolidation of offices was not an issue, there was no look into the county operations of government. Here in Missoula County I believe in the last few years there've been some strong personality clashes but I'm asking you to seriously look deep in your hearts to reconsider your idea of consolidation of these offices and to removing an elected office. I think this is a very major step that you guys are undertaking and I ask you to seriously look into the means down at the end of the road. If it's a personality clash please try to look beyond that and see what is going to be good for Missoula County, because I'm afraid what happens in Missoula County could very well happen down the road in my county, in Ravalli County, and it's something I don't think that the people of Missoula County want to give up anything to the state and I think that that is pretty much where this could snowball into. Thank you very much for your time.

Chair Kennedy: Thank you Ms. Maloney. Next person please.

Reed Smith: I'd like to just start out by saying I first found out about this Sunday when the newspaper came out and I think that was a big mistake on the part of the Commission because I think this is an issue that a lot of people are going to be concerned about eliminating an elected official. We ought to have an opportunity to find out what the issues really are. The newspaper talks about what the problems are not, it's even vague on that. No where does it really say what the problem is. I think the Commission owes it to the public to tell us why, specifically, you feel this needs to be done because I don't feel like I can really make a decision here based on what I've heard. But I'm very concerned about eliminating that position. It sounds like maybe it's a budget problem. I doubt seriously if that justifies making, taking this action. It is a balance of power issue. And I think that that's it, I think you owe us an explanation of why this needs to be done.

Chair Kennedy: Thank you Mr. Smith. Next person please.

Mike Fellows: Good afternoon Mr. Chairman, members of the County Commission, my name is Mike Fellows, for the record. I've been involved with politics for a long time. I think the main issue here is simply we need the clerk to be independent and if that means it should be an elected official, I would support that, because we all have heard the phrase that judges do what judges want to do. One of our members, I'm involved with the Libertarian Party, both as an activist and a candidate for several offices, in Kalispell had this to say. He was brought before charges and he wanted to disqualify one of the judges and also demanded a jury trial. He was denied on both demands and ordered that his demands be stricken from the record. The Clerk of Court up there, who was elected by the public, it meant that he was friendly with everyone and he was not in bed with any judge, rather than shred the documents of the case he put them in an envelope and marked it "stricken from the record." If instead of an elected Clerk of Court, we had one that was controlled by a judge or by the County Commissioners, in all probability my documents would have shredded and there would have been no way to prove what had happened. In order to protect the case records and prevent injustice, it is essential that the Clerk of Court's office remain an elected position. I think that's the most thing, to have it independent so if there are problems, they're not being controlled by the judges or by the County Commission. Thank you.

Chair Kennedy: Thank you Mr. Fellows. Next person please.

John Odlin: Good afternoon, I'm Justice of the Peace John Odlin. Thank you for allowing me to come and speak. I think that getting rid of elected County officials is wrong, totally wrong. It is a balance of power and I think that it should stay that way. I think that trying to solve a, I guess, supposed or probable or thought of or something, personnel issue by getting rid of an elected official is wrong. There's ways to handle that and there's ways to correct that and I agree with this gentlemen that it should be brought out what is the problem, why is there a problem, why are we getting rid of an elected County official. And, of course, I say like everybody else, "Whose next?" We saw Horace Brown go down as the County Surveyor. Now we're seeing a Clerk of Court be eliminated. Who else, whose next? And why? I think that the why is what really needs to be answered here. If this is a budgetary thing then tell us it budgetary. If it's a personality conflict then I think it needs to be handled with mediation or something, but I think getting rid of somebody's position and affecting a lot of people's lives is not the way to do this. I feel sorry for Mrs. Zeier that she is being placed in this position. And I've also heard today that she is going to be in that position as name only and the County Commissioners are going to be the one that are going to hire the office manager for the Clerk of Court. And I'm not sure, but I think there's a statute that says no office can be combined with the County Commissioners Office. And it sounds to me like that if they're going to be hiring the manager for that department, then they are taking over the operation of District Court Clerks and I don't think that's legal. I'm not sure, I'm just putting that out there for whatever. But I think this decision should be very well thought of and I think the public should be better informed as to what is going on here. And as I say, if we have a list, then let's get it out, let's let everybody know in advance, not when the first thing comes out in the newspaper on Sunday and the hearing is on Wednesday. I don't think that's right to anybody, I don't think it's fair to anybody. And I think that if we're going to be doing this, I think that it should be out. This should have been out several weeks ago to everybody as to what was going on here and why this was happening. And especially why it's happening. And I'll echo what Doug Chase has said, I know that Kade Breuer is probably the first one in the courthouse in the morning and one of the last ones to leave at night. And I think that that could be, says a lot for that person. She works awfully hard in her office and does a good job. I don't think you can just put just anybody into that position and say, "Okay, you are the Clerk of Court now, we want you to handle that job," when they don't even know what the job is. And I think it's wrong, I really do, I think that you should really, really think about this decision and at least get some more public input. I think one hearing in three days after it's in the paper, nobody has a chance to know anything and one of those days is on a holiday. Thank you.

Chair Kennedy: Thank you Judge Odlin. Next person please.

Vickie Zeier: Board of County Commissioners and Kade, I'm Vickie Zeier, Clerk & Recorder/Treasurer. My testimony will be short. I find myself in an extremely difficult situation. I am a consolidated office already, was appointed in '93 and elected and I'm on my second term. So I run a consolidated office and have some idea that what happened clear back when this was consolidated in the early '80s. However, I've never known the position other than how it exists now, which is Clerk & Recorder and Treasurer. I'm very active in my two associations and I hope that the public believes I do the best job I possibly can, that I try to provide a service to the public. I do not know what it all entails to be the Clerk of District Court nor did I go out soliciting for this job, as you're aware. Today, during our department head meeting, we discussed the interlocal agreement and I would just like it to be clear that I have been told all along that it would be more or less in name only, that I would not have legal or administrative duties, that that was not the intent of this consolidation. And if that is the case, then I really don't feel that I have any other testimony except for my closing, which will again be because you're eliminating an elected official. If however, this interlocal agreement does not, or does create a situation where I'm administering the duties of the Clerk of District Court and am legally responsible for this office, there are concerns that I have which you've received in written testimony from me, that I feel need to be addressed before I could ever sign this agreement. In closing, I'm the Clerk & Recorder/Treasurer, I am in charge of elections and I too have some concern about eliminating an elected position. I am also an elected official. I just hope that you will take careful consideration in considering the consolidation and hopefully, whatever you choose, it is what you're trying to achieve for the public, in the best interest of the public. Thank you.

Chair Kennedy: Thank you Mrs. Zeier. Next person please.

Kathleen "Kade" Breuer: Board of County Commissioners, I'm Kathleen Breuer, whose job is going to be consolidated. I'm in attendance for this Public Hearing to oppose this resolution. The resolution for consolidation of the Clerk of District Court and Clerk & Recorder/Treasurer is not in the best interest of Missoula County or the electorate of Missoula County. Not only was I astonished to learn of this issue, I was also presented with a letter which stated, in part, that I had advised the Board of County Commissioners of my intention to retire and not seek re-election next year. Therefore, they were going to take this opportunity to consolidate the above mentioned position. Of course, this was not the case, you were never advised of that. It was also at this meeting, on August 30th, when I first learned that this issue had been under discussion for some time and decisions were made. I read in the newspaper that this was addressed at a weekly public meeting, however, the agenda was not inclusive as to content for those meetings. I have read that when the discussions were held, all parties to the action were present. This again is not the case, I was not advised. I was made aware by

Commissioner Kennedy on August 30th that this discussion had taken place, not only that it had occurred, but they had also asked for and received a County Attorney opinion on how to proceed from the legalities of the action. They had spoken with the personnel department to find out what kind of package deal they could offer. I was told at this meeting only six people knew that this was under consideration. Now that I had been informed, he requested I not discuss it with anyone. I told him I would not discuss it publicly, but would be talking with my husband and with my Chief Deputy Kevin Parks, as this would be affecting him. Commissioner Kennedy, at that time, stated that the package, told me what the package was they'd be offering. It would be 12 months salary, from April 2000 to April 2001, with 5 years of insurance coverage for myself and my husband. I told him I'd have to think about it and get back to him. He then attempted to contact me again on September 3rd. I received the message at my home and called his office. He wanted to know if I had reached a decision. I then came to his office with my husband for further discussion. It was at this time I got a copy of my letter. After a bit more discussion, he handed me a copy of a memo dated August 25, 1999, in which the Board had made the decision to proceed with the consolidation issue. This was 10 days prior to my receiving a copy and 5 days prior to my even being advised it was under consideration. I told him at that time I would need to talk to my attorney and I would get back to him. I was then contacted again on September 13th by Commissioner Kennedy wanting to know if I had spoken with my attorney and if I had made a decision. I then met with him and Commissioner Carey for further discussion. At this meeting I told him that my attorney had advised me and made them a counteroffer on this settlement package as I had been advised to by my attorney. After much discussion, Commissioner Kennedy decided the meeting was over. I asked him to run the numbers and get back to me and I needed some explanation as to why it was even being done. I've never received that explanation. That was the last time I spoke with anyone in that office and I have not been contacted since. Apparently, from what I understand, there were other meetings, other discussions, however I was not privy to any of those. I have not met formally or informally with the full Board to discuss this and I continue to be amazed at the rumors. I was told by the Missoulian reporter of a settlement package and further amazed when I read it in the newspaper. I still have not seen or read the actual document, therefore, I cannot comment as to I don't even know what it contains. Apparently, Mrs. Zeier, who has been placed in a very bad situation, was advised that this was going to be happening and was told that "Kade's okay with this and there's no problem," when in truth, I was not okay and I'm not okay with it. You have also removed the most important player in this game, the voters of Missoula County. Had you been up front and advised me you were considering this move, that you were planning to present it to the voters of Missoula County to vote on in a June or November election, whether they wanted the consolidation to occur, I can accept that, because then it would be the decision of those voters that put me into office to begin with. If they choose to eliminate the office, not you, even though you have the legal right to do so; do you also have the moral and ethical right to do so? You have deprived the people of a voice, you are in a position of power to make that change as you please, but you must also remember who and how you obtained your position. The power you have been given to use judiciously, was given to you by the voters of Missoula County, and they can just as easily remove it from you. Perhaps that's what we need to do here now, is show you where the power really is, at the ballot box! I oppose this consolidation but I'm also well aware it's a done deal. I will accept a settlement from you, but it will be a mutually agreed upon settlement, one I have read, my attorney has reviewed and we can then make an informed decision on how it will all come together. I do not want to read about it in the newspaper. I was once told by a very nice person that if I couldn't stand the heat I was in the wrong business. It's not the heat that bothers me, it's the deceit. I believe you owe not only me an apology, you owe the loyal and honest employees of Missoula County an apology and you mostly owe the citizens of Missoula County an apology for your behavior in this manner. I raised my children to believe that no one ever goes looking for trouble, to be bullies, but if someone else started a fight, they better be ready to finish it or they would have me to answer to. They were to take pride in what they chose as their life's work, to be kind, compassionate, to be the best they could possibly be, and they were worth more than anything else in this world. I only hope I have set the proper example for them to follow. I have but only one boss in this life and it's not you. The only one I answer to, we walk and talk together every day and while I was on vacation, He reminded me again He is in control, He didn't need any help from me, so I could relax and have a wonderful day. But you know what, I'm having a great day, because I know everything's going to be fine.

Chair Kennedy: Next person please.

At this point in the meeting, the audio tape was switched to side 2. There was an equipment malfunction and the exact testimony of Pat Kessner and Lorraine Van Ausdol were not recorded. Lorraine Van Ausdol did provide a written copy of her statement which is entered below in its entirety. The malfunction was corrected at the end of Ms. Van Ausdol's testimony and the rest of the meeting was recorded properly and is transcribed verbatim.

Pat Kessner stated she was with the Workers Compensation Court in Helena. She was opposed to this consolidation and the elimination of an elected official.

Lorraine Van Ausdol stated she was the Clerk of District Court for the 18th Judicial District, Gallatin County, Bozeman, Montana. She read a prepared statement. "With all due respect I feel that you are truly making an unwise decision. I understand that you might be under a great deal of stress with the problems that have been put upon you by the continued animosity of the Clerk and the District Court judges, but I only think you are choosing the Band-Aid process and not the full healing process. In this work world that we all exist in, there are bound to be many personality clashes, we all should be adult enough to find a workable solution and then let each party just get on with their elected position's responsibility. I feel very strongly that it should not be the function of the District Court judges to manage the Clerk of District Court's office. The Clerk of the District Court is elected to be the keeper of the records, both in and out of the courtroom, we have the hands on daily responsibility to see that these cases are prepared properly and when the proper time comes for these cases to be given to the judge for a decision to be made, then his job begins. It is very important that the public has an impartial, unbiased person to ask questions of, the judge cannot do this, he is to remain strictly equal, the clerk can advise the public and the people involved what the process is and what the progress of any case is. Without the separation of the judicial and the executive branches of government, we are giving the public a very unfair and prejudicial accessibility to their court system. I happen to be one of those elected officials that have a dual role, in 1990 the Gallatin County Commissioners consolidated my office with that of the Public Administrator. It was only this last year that I was given any additional staff to assist me with these added duties and I must share her with the duties of the Deputy Clerks of Court. This was basically a cost saving method for this county and has surely added a tremendous load to my already busy office. I know that your consolidation will not be a cost saving method, because you have already increased the salary of your law clerk/court administrator to more than the Clerk of Court's, and when he finds out how much work there is to be done, he will more than likely be asking for additional staff and the judges will tell you to give them more money and you will not be better off financially. I implore you to use some mediation attempts to solve your problems, do not use this drastic

measure to please personality problems. Remember, everyone has a different way of doing their job and I know for a fact that Kade has always been an excellent Clerk of District Court and the voters of that county deserve to have their say if they are dissatisfied with her performance. You are making a very large commitment to the judges to let them know that every employee that doesn't please them they can just tell you Commissioners to get rid of them. If I were the rest of the elected officials in your county, as well as all of you County Commissioners, I would fear that you are giving the judges a lot of power in areas that they should not tread in. How will you ever say no, if you do not use your decency and your common sense at this moment. I have worked for the District Court in Bozeman for thirty years, I have witnessed very heated arguments between my former boss Evelyn Thompson (the very first president of the Clerks of District Court Association) and the judge, W.W. Lessley (who ruled with a very heavy hand). Even with that sort of communication they worked hand in hand to make sure that the 18th Judicial District was one of the best in the state. They may not have agreed on some of the ways to get the job done, but they were in full agreement that having the most efficient court was the most important part of both of their roles. I know that they had the utmost respect for each other's jobs and if they just would calm down they would realize that the other one had no business trying to run the other's office. In this world, where we constantly remind everyone to just put yourself in the others shoes for awhile, we elected officials should be the first to set the example of compromise. I respectfully request that you do not make this decision just to "get rid of Kade" and think what precedent you are setting and who you are letting run your county. Whose head will roll next?"

Chair Kennedy: Thank you Lorraine. Next person please. Is there anyone else? Anyone at all would like to testify before we close the hearing? Last call.

June Little: I'm the Clerk of Court in Livingston and I have been in the office for 20 years. And I feel like everyone that has spoken here today, that the three people that are elected have the power to take away another elected position is wrong and it shouldn't be happening and I am appalled that I have to be here today to protect myself and all the other elected officials in the State of Montana because of whatever personality conflict is going on. And I strongly oppose and hope that you remember you will be running for election again and this decision has got a lot to do with your results. Thank you.

Chair Kennedy: Thank you Ms. Little. Next person please.

Patty Baumgart: With a little trepidation, I'd like to speak to this group. I want you to know I'm on annual leave from my job in the Personnel Office so that I could be here. I guess specifically what I would like to implore this Board is to consider this aspect of this consolidation which may involve the District Court judges power in determining personnel issues. I'm not here to give you my professional advice on whether you should or shouldn't make this decision on consolidation. I want to say that if it is a decision you make, that we consider very carefully how we set up the supervisory structure of that office. We know the function will have to continue. Vickie has talked about some of the problems it presents in other quarters of this county where we have District Court administration of personnel we have continually seen kind of a first among equals mentality developing where we have employees who are treated just a little bit differently than the other 600 employees that are here because of the influence of those District Court judges. I think that creates some dangerous precedents and it creates a sense of inequity and even though everybody else says this isn't a fair world and I know I've been accused of tilting at windmills I always try to say to employees we try to create reasonable rules and we try to apply them consistently and I'm speaking, I guess specifically, Vickie, about the people that run your divisions now in the Clerk & Recorder/Treasurer's office and now we would be potentially adding another division that would be treated perhaps differently than the other divisions in Vickie's office in terms of administration salary structure, who appoints the person, who can fire the person, and that just causes me enough concern to say if this means that then the District Court judges are getting a greater hold into personal administration matters in a larger group of employees it's a concern that I'm concerned enough about it to just take an hour of vacation, come up here and say "Gee, that worries me a little bit." I hope you really consider how this function will be handled in the absence of an elected Clerk & Recorder, if that's the decision that you make and consider that it does impact all of the employees who are in those supervisory structures, both in Vickie's shop and other supervisors throughout this County who are doing good work for the Commissioners. I struggle sometimes because I know there's time we have to come up with extra effort and variations on rules to accommodate a need the Commission decides they have and how do we accomplish that. But I think it's also real important that we remember that if it does in any way even appear to set up a first among equals kind of group of employees, I think that's a problem for County employees across the board and particularly for supervisory structure employees such as exist in Vickie's shop already. So, like I say, thank you for letting me, I know you haven't asked for my professional advice from the Personnel Office, you've been getting your advice I know from the director, and I don't mean to step into this arena. I just thought this was probably the best forum I was going to have to make these concerns known to you. Thank you.

Chair Kennedy: Thank you Ms. Baumgart. Next person please. Who wants to be Number 13? Excuse me, pardon me. Is there anyone else. Come on. One more time, we're going to close the public hearing unless I hear from anyone else. Last call.

Debbie Harmon: I'm the Clerk of Court in Ravalli County. Kade Breuer is an asset to her office, to the County of Missoula, to the entire State of Montana. To take an employee with her wealth of knowledge and her capabilities and just say good-bye to her and give the job to someone who knows nothing about the office, that's absurd. You wouldn't want one of us to step into your position and say, "Okay, you go out the door, I'm going to make your decisions now." You just can't do that. She was elected by the voters. If there is a problem with Kade's abilities, she can be defeated in an election, that is the way to have it done. You don't just take a group of people and make the decisions for the public. I think this is a big mistake.

Chair Kennedy: Thank you Ms. Harmon. Is there anyone else? Last call.

Marcia Porter: Commissioners, I'm the Missoula County Records Management Supervisor. I just personally would like to know why was there so much urgency in this? I feel like everybody needs to know why there was such urgency in this. I have known Kade, I have worked at Missoula County for 20 years. Her office has never been in better shape than it is now. But I would like to know why the urgency in the decision to do this? Thank you.

Chair Kennedy: Thank you Marcia. Next person please.

Gail Johnson: I work in the Clerk of Court's office as an employee. And eliminating this position would be very, very hard for the employees in her office. Also, there isn't anybody that can do the job any better than a Clerk of Court for this position because nobody else can really understand how much stress and time it takes to be able to know what the judges need, what the public needs. And as a, also, voter, I would not eliminate this position because it is necessary to have a Clerk of Court that can work for the people and also be able to work with the judges too. If there is a conflict of personality in the office between judges and people in that office, Kade is the person that has to help out and correct those, including conflicts with the judges with employees in the office, as with filing clerks, court clerks and it would be really hard not to have somebody in that position to stand there and represent you also towards the public. We help a lot of public people who come in on pro se actions. There's a lot of things that are necessary to represent the people that the judges can't be a decision-maker on. We have to help with filing the paperwork and the records that come into our office and there's an enormous amount of that and to be able to have a person, a Clerk of Court there to control those records is very needed. To be able to eliminate this position, we would not be able to have the office management there as we do now. If we eliminate this position, we wouldn't be able to function as well as a full office for the public and for the judges also because it takes a lot of people and a lot of knowledge to be in that position. I really am opposed, against this elimination of the office, of the Clerk of Court's position. It's elected by the people and it needs to stay that way.

Chair Kennedy: Thank you Ms. Johnson. Next person please.

Linda Carlson: I work in the Clerk of Court's office for Kade Breuer also. And I guess what I'd like to say is, for all the rest of you chicken people that won't come up here, that we were all very, very surprised and most of all the information we received, we received from the newspaper on Sunday. And, no one has explained to us why this is happening and if it's a matter of, we don't understand if it's a matter of budgeting or if it's a matter of personality conflicts. I don't understand how you could lose a job over personality conflicts. But, I guess my only request would be that there be more time and more talk and more information, because no one's been informed, no one understands. To make a decision in five days, after what Judge Odlin said, giving three days notice and one being a holiday, just doesn't give people enough information to make an informed decision, although it's not the people's decision, it's your decision, but ultimately it's the people's decision. Thank you.

Chair Kennedy: Thank you Ms. Carlson. Next person please. Is there anyone else who would like to testify on this issue? Anyone else, last call. Yes.

Loretta Amos: I work in the Clerk of Court's office. My name is Loretta Amos. I think if anything that's as important as is what's being done here today that it should be only a proposal and it should be given to the voters of Missoula in November or if you want to have a special referendum, if we can do that for Missoula Development and all of the other minor things, then I think we need to give it to the public and allow them to make the decisions on it.

Chair Kennedy: Thank you Loretta. Next person please. Anyone else? Last chance. Okay, well, then we'll close the public hearing and let you know that again the law requires us to take a decision on this issue within five days of the public hearing, that's not a choice that we have, that is a choice that is mandated in statute. And after consultation with our lawyer, taking into account that Sunday is a holiday and even though that isn't the business day under which the five days falls, that Monday is the day, the close of the business day, that we have to take a decision. So we will decide by Monday, the close of business. So with that, we will conclude our business. If there's anything else to come before the Board, we'd like to hear what that is before we adjourn. Thank you very much, we're adjourned.

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

THURSDAY, OCTOBER 14, 1999

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

Claims List – The Commissioners signed the Claims Lists, dated October 13, 1999, batch numbers 229, 230, 231, 232 and 233, with a grand total of \$153,230.75; and batch number 240, with a grand total of \$4,960.63. The Claims Lists were returned to the Accounting Department.

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Audrey Walleser as principal for Warrant #353330, issued 9/20/99 on the Missoula County 2160 Fund in the amount of \$140.00, not received in the mail.

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Patchechole Ojo as principal for Warrant #350216, issued 7/12/99 on the Missoula County 2180 Fund in the amount of \$900.00, not received in the mail.

Plat and Development Agreement – The Commissioners signed a plat and development agreement for Charlie's Acres, a minor subdivision located in the SW1/4 of Section 4 and the NW1/4 of Section 9, T13N R20W, PMM, Missoula County, a total area of 61.64 acres, with the owners of record being Charles P. and Bonnie E. Graham.

ADMINISTRATIVE MEETING

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

Approval of Architectural Fee – The Commissioners approved and Chair Kennedy signed a request for approval of fees for architectural services from Architects Design Group in Kalispell, for design services for the secure courtroom and the remodel of the mapping office for the Sheriff's Department. The approval was forwarded to Mike Absalonson of ADG in Kalispell.

Amendment to Purchase and Sale Agreement – The Commissioners approved and signed an Amendment to the Purchase and Sale Agreement dated July 19, 1999 with USF Reddaway, Inc. for Lots 2 and 3 and a portion of Lots 10

and 11 of the Missoula Development Park Phase I. This extends the release date contingency to December 15, 1999 and the closing date to December 20, 1999.

Certificates of Acceptance – Commissioner Evans signed seven Certificates of Acceptance for County Maintenance by the Missoula County Surveyor's Office:

1. Alloy South, with limits of acceptance of .068 miles;
2. Curlew Court, with limits of acceptance of .127 miles;
3. East Harrier, with limits of acceptance of .143 miles;
4. Kestrel Drive, with limits of acceptance of .097 miles;
5. Trumpeter Court, with limits of acceptance of .127 miles;
6. Trumpeter Way, with limits of acceptance of .167 miles;
7. West Harrier, with limits of acceptance of .106 miles.

All certificates were returned to the Surveyor's Office for further handling.


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

FRIDAY, OCTOBER 15, 1999

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

Claims List -- Commissioners Carey and Kennedy signed the Claims List, dated October 14, 1999, batch numbers 225, 234, 239, 241, 242 and 244, with a grand total of \$138,283.01. The Claims List was returned to the Accounting Department.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, OCTOBER 18, 1999

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

Claims List -- Commissioners Kennedy and Evans signed the Claims List, dated October 18, 1999, batch numbers 243, 245, 247, 248, 249 and 250, with a grand total of \$121,497.66. The Claims List was returned to the Accounting Department.

Resolution – The Commissioners voted 3-0 to approve and signed Resolution No. 99-073, a resolution consolidating the Office of Clerk of District Court with the Office of Clerk and Recorder/Treasurer, effective January 1, 2001, unless the Office of Clerk of District Court becomes vacant by resignation or otherwise prior to January 1, 2001, in which case the consolidation shall become effective on the occurrence of the vacancy.

Letter – Acting Chairman Evans signed an award letter and special conditions page for a grant to continue the Flagship Project at Rattlesnake Middle School and Hellgate High School. Value of the grant is \$93,990.00. (Commissioner Evans signed as Acting Chairman because she had signed previous documents for this grant.) The documents were returned to Peggy Seel in OPG for further handling.

HOME Documents – Chair Kennedy signed a Deed Restriction Agreement and Subordinate Deed of Trust for the HOME Program with Glory G. Lewis, for a loan of \$4,827.00 for assistance in purchasing property at 2316 Leo Avenue, Missoula, MT. The documents were returned to Cindy Wulfekuhle in OPG for further handling.

Task Order – Chair Kennedy signed a Task Order with the Montana Department of Public Health and Human Services for Partnership Health Center to implement a breast and cervical cancer screening and early detection program in Mineral, Missoula, and Ravalli Counties. Performance schedule is September 30, 1999 through September 29, 2000. Compensation shall be \$19,000.00. The Task Order was returned to the Health Department for further handling.

TUESDAY, OCTOBER 19, 1999

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

Claims List – The Commissioners signed the Claims List, dated October 18, 1999, batch number 251, with a grand total of \$568,880.95. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Payroll Transmittals – The Commissioners signed a Payroll Transmittal for Pay Period 19-02, with a total Missoula County Payroll of \$350.00; and a Payroll Transmittal for Pay Period 20, with a total Missoula County Payroll of \$694,954.33. Both were returned to the Auditor's Office.

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with the Missoula Symphony Association to sponsor a project by the Symphony to perform a series of concerts in rural communities near Missoula. Value of the Agreement is \$9,400.00. Duration of the Agreement is July 1, 1999 through June 30, 2001.

Contracts – The Commissioners awarded the bid and signed the contract with Johnson Brothers Contracting to provide, haul, and place 50 cubic yards of topsoil for landscaping at the Ninemile Community Center. Work will be completed by November 15, 1999. Total cost is \$1,335.00; Johnson Brothers was also awarded the contract to provide 75 cubic yards of crushed surfacing gravel for a parking lot at the Ninemile Community Center. Work will be completed by November 15, 1999. Total cost is \$2,205.00. Both contracts were returned to Horace Brown, County Surveyor, for further handling.

Letter – Chair Kennedy signed a letter to Aaron Rudio of D.A. Davidson & Co. consenting to Davidson's participation as a bidder in competitive sale of Tax and Revenue Anticipation Notes. The letter was returned to Jane Ellis, CFO, for further handling.

Proposal – The Commissioners approved and Chair Kennedy signed acceptance of a proposal from D.A. Davidson & Co. to act as Financial Advisor for the sale of revenue anticipation notes. Cost of these services will be \$5,000.00. The proposal was returned to Jane Ellis, CFO, for further handling.

Professional Services Contract – The Commissioners signed a Professional Services Contract with Cathy Joy to assist Claudia Marieb and Sally Mullen (YWCA Director) with a program assessment of YWCA sexual assault and domestic violence services. Performance schedule is October 18, 1999 through December 18, 1999. Compensation shall not exceed \$3,000.00.

Interlocal Agreement – The Commissioners signed an Interlocal Agreement for Clerk of District Court services with the Missoula County Clerk and Recorder/Treasurer/Clerk of District Court. The Agreement shall take effect on the effective date of a resolution consolidating the Office of the Clerk of District Court with the office of Clerk and Recorder/Treasurer and continue in force until June 30, 2001. It shall be financed by departmental revenue and the District Court mill levy.

Resolution – The Commissioners signed Resolution No. 99-074, a resolution to rezone property described as a portion of Tract A2-B of COS 4264 (Missoula Bible Church), from C-II (Light Industrial) to C-P1 (Public Lands). The result will be that all of Tract A2-B will be zoned C-P1.

Other items included:

- 1) The Commissioners approved an Exhibit for Rumble Creek Road setting out a 40-foot right-of-way – 20 feet on either side of the centerline of said road, subject to the Surveyor contacting landowners.
- 2) The Commissioners voted to pay for phone installation for the Warrants Hot Line from the Justice Court budget.

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

WEDNESDAY, OCTOBER 20, 1999

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

PUBLIC MEETING – October 20, 1999

The Public Meeting was called to order at 1:30 p.m. by Acting Chairman Barbara Evans. Also present were Commissioner Bill Carey and County Surveyor Horace Brown. Commissioner Chair Michael Kennedy had an appointment outside the office and was not present.

Public Comment

None

Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$986,853.00. Acting Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Sale of Tax and Revenue Anticipation Notes

Jane Ellis, Chief Financial Officer, presented the staff report.

This is a request to adopt the resolution relating to \$2,600,000 Tax and Revenue Anticipation Notes, Series 1999; awarding the sale thereof and approving the offering circular relating thereto. This note is necessary to cover the deficit related to failed sale of the old County Shops property and the deficit related to the failure to sell the "jail remainder" parcel as of this date.

There were two bidders for the sale, U.S. Bancorp Piper Jaffray, Inc. and D.A. Davidson. U.S. Bancorp offered the best interest rate of 4.2994%. The Commissioners need to make a motion to adopt the resolution and authorize the Chair to sign the documents. The notes will be payable June 30, 2000. The interest cost will be \$74,212.67.

Commissioner Carey asked if one of the properties was sold would there be some way to pay part of the note?

Jane Ellis stated these notes could not be culled and would be outstanding until June 30, 2000. Large land transactions typically do not close quickly. Even if a sale is initiated now, the closing most likely wouldn't be completed until about June anyway.

Commissioner Carey moved that the Board of County Commissioners adopt the resolution relating to \$2,600,000 Tax and Revenue Anticipation Notes, Series 1999, and authorize the Chair to sign the resolution, giving the sale to U.S. Bancorp Piper Jaffray, Inc. Acting Chairman Evans second the motion. The motion carried on a vote of 2-0.

Hearing: Revocation of Agricultural Covenant (Mikesell)

This is a consideration of a request to remove an agricultural covenant from that parcel described as Parcel A, COS 2627, located in the East 1/2 SW 1/4 of Section 21, T13N, R15W.

Carol Mikesell has submitted a request to remove an agricultural covenant previously entered into as an exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 10 acres in size located in the Potomac area off Coloma Road. Ms. Mikesell has owned the property since 1969 and divided the parcel in 1981. She retains ownership of both the parcel created by the use of the agricultural covenant and the remainder parcel of that COS.

The history of the parcel is as follows: Original parcel of 34 acres was divided by Agricultural Covenant in 1981 on COS 2627. According to the records kept by the Missoula County Surveyor, the applicant has used the following exemptions to the Subdivision and Platting Act: Agricultural Covenant in 1981.

Acting Chairman Evans opened the public hearing.

Carol Mikesell stated her ex-husband had done this Agricultural Covenant years ago. She does not use the property any longer, she is in Hamilton taking care of her elderly mother. Lifting the covenant would make the property more marketable.

Acting Chairman Evans asked if there was a map showing the location of this parcel?

John Geesen, ERA C&C Real Estate, presented a map and stated the property was off Hole in the Wall Road, about a mile and a half off of Highway 200. The Mikesell's had retained the agricultural use for tax purposes. There is access to both parcels, one by Hole in the Wall Road and one by Coloma Road.

Commissioner Carey wondered what the ramifications would be of possible subdivision in the future and whether or not the covenant could be removed subject to subdivision review.

Carol Mikesell stated she did not understand any of the processes Commissioner Carey mentioned. When she bought the property it was all one piece and she wants to sell it as all one piece.

Acting Chairman Evans asked Nancy Heil to comment on how this property might benefit from subdivision review? She explained that subdivision review included road access, protection of riparian areas and wildlife, etc. If there are no problems that subdivision review could help solve, it would not make sense to subject the property to such review. If there are problems identified that could be fixed, then maybe it did need such review.

Carol Mikesell stated there was no problem with access as John Geesen has said. She wanted to sell the entire parcel and whomever bought it would make the decision as to its use.

Nancy Heil, Office of Planning and Grants, prefaced her comments with the fact that she was not familiar with this parcel at all and the Office of Planning and Grants had not seen anything related to this action. The consequence of removing the agricultural exemption would mean there were two lots of the original parcel, both of which could be conveyed separately.

Carol Mikesell stated she wanted to sell the property as one unit, the entire 40 acres as a whole.

Nancy Heil asked if removing the covenant would result in one 34 acre parcel or one 10 acre parcel and one 24 acre parcel?

Acting Chairman Evans stated it would be two parcels.

Nancy Heil stated that if this came in as a subdivision, the kinds of things they would evaluate would include Comprehensive Plan compliance. This area is designated one dwelling unit per 40 acres, open and resource land. She asked about the condition of Coloma Road, was it very steep?

Carol Mikesell stated the road was not steep in this area. It cut off corner of her property then went over the hill to several other properties.

John Geesen stated the road curves right by the corner of this property. About a third of this parcel is down in the Union Creek valley area then rises to a relatively level bench that continues well past this parcel.

Nancy Heil asked if this was part of the former Jordan Ranch Tracts?

Carol Mikesell stated it was.

Nancy Heil stated she would have to check the Comp Plan but most of the former Jordan Ranch Tracts are one dwelling unit per 10 acres.

John Geesen stated several of the adjacent properties were approximately 10 acres.

Nancy Heil asked Tim Wolfe where this property was in proximity to the Hooker Addition?

Tim Wolfe stated the Hooker Addition was adjacent to this property.

Nancy Heil stated the Commissioners reviewed the Hooker Addition last summer. Tim Wolfe felt this property was in the one dwelling unit per 10 acres area. The review would also include a question about high ground water due to the proximity of Union Creek. Access would also be looked at. Coloma Road is a County road but it is not maintained.

John Geesen stated that the property would have to be reviewed for the lifting of sanitation restrictions.

Acting Chairman Evans stated the main thing the Commissioners looked at for an agricultural covenant revocation was whether or not this was part of a plan to evade subdivision review. The land has been in this condition for 18 years and has been used as agricultural land. She did not see this request as an attempt to evade subdivision review.

Commissioner Carey stated Ms. Mikesell had indicated she wanted to market the property and this would make that easier.

Carol Mikesell stated that was correct.

Commissioner Carey stated that was what concerned him, the new owners and what they may wish to do with the property. It would be worthwhile for the new owners to submit their plans to the Planning Office to be reviewed.

Jodie Hooker, Deschamps & Associates, stated there were buyers for the property, the transaction was to have closed but was delayed when this matter came up. It needs to be resolved before the sale can close. The buyers are from Nevada and their plans for the property at this time are unclear. They are buying the entire 40 acre parcel as a whole.

Commissioner Carey asked if this was a speculative purchase for them?

Jodie Hooker stated the buyers concern is that if they buy the land as it is, they will be basically stuck with this 10 acre parcel, if they wanted to do anything different, such as sell the 10 acres, they would not be able to do so.

Commissioner Carey stated he was in favor of removing the agricultural covenant with the qualification that the property is then subject to review by the Planning Office, at such time as they either decide to sell or develop it.

Nancy Heil stated that when the agricultural covenant is removed it does not remove the exemption and in effect there are two separate properties that could be conveyed separately. She was not aware of what would require them to come into Planning for review because the two parcels are already created. By removing the ag exemption, that lot could be sold for residential use.

Acting Chairman Evans stated there was no mechanism that triggers review.

Nancy Heil stated there was nothing Planning could do to make that dividing line go away and the property is well outside the building permit jurisdiction. The property would have to be reviewed for the lifting of sanitary restrictions and an approach permit, if one does not already exist.

Jodie Hooker stated the properties surrounding this land are completely residential on all sides. The 10 acre piece sits by itself in moderate to heavy trees and there is no water whatsoever on the property.

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

Commissioner Carey moved that the Board of County Commissioners approve the request by Carol Mikesell to remove the agricultural covenant from her property based on the fact that there does not appear to be an attempt to evade subdivision review. Acting Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Acting Chairman Evans stated Ms. Mikesell would receive a letter from the Commissioners regarding this action.

Consideration: Lehman Addition (2 lot subdivision) – Miller Creek Area

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

Cheryl Lehman, represented by Territorial Engineering, is requesting approval to split a 19.25 acre parcel into two lots that are 3.82 and 15.43 acres in size. The property is located off Miller Creek Road. It is separated from Miller Creek Road by another small parcel.

The property slopes steeply down south to Miller Creek, which runs through the central portion of the property and then the terrain rises again to a hillside in the southwest portion of the property. There is an existing house that is located on the level area in the northern portion of the property and the proposed new home site is located adjacent to the base of draw in the southeast corner of the property. There is a portion of Cahoot Canyon located west of the property. Parts of the property are unzoned and parts of it are zoned C-A3 (Residential) with the residential density of one dwelling unit per five acres. The 1997 Miller Creek Comp Plan designates rural residential, parks and open space and open and resource land uses.

There are some covenants governing the property from previous land divisions which restricted lot size to greater than 6 acres and those have been amended. There are no new covenants that are proposed with this subdivision. Land uses in the area are primarily low density residential. The Trail's End Estates Subdivision is located west of the property and there are some large open and undeveloped areas across Miller Creek Road and south of the property both.

The property is accessed from Miller Creek Road and there is a private easement that crosses that tract to the north from Miller Creek to provide access to the subject property. There is a driveway that now serves a home that is under construction on that tract, therefore, the northern portion of that access will serve three lots and is subject to road standards. For that short portion, the applicant has requested variances for right-of-way and surface width, as well as

provision of pedestrian walkways. There is an existing driveway that crosses an irrigation ditch via a wooden bridge and there will also be a bridge required to cross Miller Creek and its floodplain to reach Lot 2 and the proposed homesite.

Condition 1 requires that the subdivider contribute to the fund for Miller Creek Road improvements and Condition 2 requires an RSID/SID waiver for future improvements to Miller Creek Road. Bill Lindstrom at the Missoula Rural Fire District has stated that any fire department access road over 150 feet in length has to be 20 feet wide and engineered to carry 80,000 pounds in all weather. There would also need to be an approved turnaround at the end of the driveway. The fire district's access is going to depend on homeowner maintenance, including snowplowing. Condition 3 requires fire district approval of driveway design and Condition 4 requires a road and driveway maintenance agreement.

The application indicates that additional surface runoff is expected to be retained on-site. The applicant has proposed a berm to divert surface water from around the new home on proposed Lot 2. Conditions 3 and 5 require that drainage plans be approved by the Surveyors Office prior to plat filing and building permit issuance.

There is an irrigation ditch that runs north of the subject property which had water in it at the time of the site visit. There is another irrigation ditch that runs south of Miller Creek which was dry and has been plugged, but the water rights are still retained. Any culverts or bridges across those ditches will have to be sized to handle flows. Condition 3 requires that the applicant show that any bridges or culverts won't affect agricultural water users.

Portions of the property are currently used as horse pasture and the applicant has said the creek is dry from approximately August to April. The Maloney Ranch downstream owns a lot of the water rights in the area and it is expected that as more development occurs on the Maloney Ranch less water will be diverted through irrigation ditches and there will be increased flows in Miller Creek itself.

There is very little vegetation along the creek banks on the property. Across the property fence and directly upstream of the property there is more vegetation lining the creek bank. The application includes a riparian management plan and there was an additional plan submitted by the applicant in October that proposed planting some willows, cottonwoods and native grasses along the creek. That planting would occur in five foot areas every 100 feet in the year 2000 and every 50 feet in 2002. This planting plan also states that the area would be fenced until the plants mature. Also, the applicant has indicated that there would be an automatic watering trough for the horses and the property would be crossed fenced between Lots 1 and 2.

Staff has recommended quite a few additions to the riparian management plan, as indicated in Condition 8. One of them is that the planting occur in longer areas than proposed, more like 20 feet at a time. Staff is also recommending that plan include more detail about the species and spacing and location and size of plants and the time of planting, etc. Staff has noted to the applicant that the Missoula County Conservation District is available to provide assistance with the plan development and they will offer that service for free. Condition 8 also requires that if monitoring shows that vegetation is damaged after the fence is removed, that the area be replanted and the fence be replaced.

There is a portion of the property that is within the 100 year Miller Creek floodplain and Condition 10 requires those floodplains boundaries be shown on the plat and that area be designated as a no-build zone. There is a fairly heavy knapweed infestation on the property so Bill Otten has recommended that any driveway construction or bridge construction would need to have associated with it a revegetation plan for disturbed sites. That is noted as Condition 11. Condition 9 addresses living with wildlife issues.

There was a question at Planning Status about whether the property was inside the Urban Transit District. Mike Cress stated it is not in the district and it is a fairly long way from the current district boundary. It may be included in the district in the future but Mike Cress was not sure if the density in that area would warrant transit service.

Staff is recommending approval of the three variances requests and approval of the subdivision subject to the 11 conditions as noted in the staff report.

Tim Wolfe, Territorial Engineering and Surveying, developer's representative, was present as was Cheryl Lehman, the applicant. They had no problems with the staff report or conditions. They would be happy to answer any questions the Commissioners may have.

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

Acting Chairman Evans asked that with the concerns about the planting and fencing of the creek banks, would it not be easier for Ms. Lehman to fence the horses in rather than fence the horses out?

Cheryl Lehman stated she did not feel it would look that good to fence the entire creek off. It is agricultural land and she would rather do small portions of the bank at a time.

Acting Chairman Evans stated she was more concerned with adding the vegetation back, not so much how it would look. Requiring the horses be fenced out of the creek seemed an expensive solution. She wondered if it would be easier to keep them corralled, as they would be fed instead of grazing.

Cheryl Lehman stated she would feed them year-round.

Acting Chairman Evans asked if it would be simpler to fence them in a spot than to fence them out of the whole creek?

Cheryl Lehman stated she did plan on doing some crossing fencing. Her horses like to wander around and usually don't go near the creek. They generally stay close to where they are fed. They spend most of their time up on the bench away from the creek.

Commissioner Carey asked how many horses she had?

Cheryl Lehman stated she currently has five horses but is selling two of them, as well as two boarders to help pay for the hay.

Acting Chairman Evans stated the pictures showed there was virtually no forage in the area.

Cheryl Lehman stated the property had been originally used by Kessler for rodeo stock and had been overgrazed. She hoped this subdivision would help her financially and she could replant the whole area with dryland grasses. That was her goal.

Acting Chairman Evans asked if Ms. Lehman had any problems with any of the conditions listed.

Cheryl Lehman stated she did not have any problems with any of the conditions.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision; approve the variance request from Article 3-2(3) for the private access road to vary from the required 54 foot right-of-way width to the existing 30 foot width; and approve the variance request from Article 3-2(3) for the private access road to vary from the required 24 foot width to a 20 foot width, based on the findings of fact set forth in the staff report. Acting Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey moved that the Board of County Commissioners approve the Lehman Addition Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. Acting Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Lehman Addition Summary Subdivision Conditions of Approval:

1. The subdivider shall mitigate the traffic impacts generated by this subdivision on the Miller Creek transportation system. The amount of fee assessed and the specific improvements to be made shall be approved by the Board of County Commissioners and the County Surveyor's Office, prior to plat filing. *Subdivision Regulations Article 4-12 and County Surveyor and staff recommendation.*
2. The following statement shall appear on the face of the plat and in each instrument of conveyance:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for improvements to Miller Creek Road, including installation of pedestrian walkways or bikeways, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land." *Subdivision Regulations 3-2(5) and staff recommendation.*
3. The portion of the road serving more than 2 lots shall be named, subject to County Surveyor approval, and paved to at least a 20 foot width. Engineering plans and specifications for the road, including an emergency vehicle turnaround and drainage improvements shall be approved by the County Surveyor's Office and Missoula Rural Fire District prior to plat filing. Engineering plans and specifications for the driveway, including bridges and drainage improvements, shall be approved by the County Surveyor's Office and Missoula Rural Fire District prior to plat filing. The applicant shall provide evidence that the bridges crossing the irrigation ditch will not impact agricultural water users. *Subdivision Regulations Article 3-2 and County Surveyor, Missoula Rural Fire District, and staff recommendation.*
4. A road maintenance agreement shall be filed that addresses maintenance of shared accesses and individual driveways, subject to County Attorney's Office approval prior to plat filing. *Subdivision Regulations Article 3-2 and staff recommendation.*
5. Drainage plans for the site shall be approved by the County Surveyor's Office prior to plat filing and building permit issuance. *Subdivision Regulations Article 3-4.*
6. The following statement shall appear on the face of the plat and in each instrument of conveyance:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for public water and sewer systems, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land." *Subdivision Regulations Article 3-7(2).*
7. The developer shall contribute \$100.00 per new lot to the Missoula Rural Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants at the time of plat filing. *Subdivision Regulations Article 3-7(2) and Missoula Rural Fire District recommendation.*
8. The plat shall show the boundaries of the Riparian Resource Area. The Riparian Resource Management Plan shall be amended to include an attachment showing the boundaries of the riparian resource area; a description of any existing riparian vegetation; and a description of the functions of riparian areas. The plan shall include more clarification of the planned restoration after driveway construction, including what general time frame the "original or better" condition refers to. The responsibilities of each lot owner; long term maintenance, and livestock uses in the riparian area shall be more specifically defined. The planting plan shall specify that planting along the creek will occur in areas at least 20 feet in length. The planting plan shall be amended to include more detail about the species, spacing, location and size of plants; time of planting; goals of the revegetation; and provisions for monitoring and revegetation. If monitoring shows that vegetation is damaged after fence removal, the fencing shall be replaced and the area replanted. The Plan shall be reviewed and approved by OPG prior to plat filing and included in a development covenant. *Subdivision Regulations Article 3-13 and staff recommendation.*

9. A development covenant shall be filed, per MFWP recommendations, to state that homeowners accept responsibility for living with wildlife and are responsible for protecting their vegetation from damage, confining pets and properly storing garbage and other attractants; that the developer is obligated to inform homeowners of the potential problems associated with the occasional presence of bears, mountain lions, deer, etc., and that the artificial feeding of wildlife is prohibited. The development covenant shall address "Living with Wildlife" issues including proper storage of garbage, animal food storage, pets, barbecue pits, garden fences, compost piles, and apiaries. The covenants shall be approved by the County Attorney's Office and OPG and filed prior to plat filing. *Subdivision Regulations Article 3-2(6)(E), 3-13, 4-1(12) and Montana Fish Wildlife and Parks and staff recommendations.*
10. The floodplain boundaries shall be delineated and shown on the face of the plat as a no-build area, based on FEMA Base Flood Elevations, subject to Floodplain Administrator approval. *Subdivision Regulations Article 3-1(1)(B), 3-1(2) and Floodplain Administrator recommendation.*
11. A Revegetation Plan for Disturbed Sites shall be approved by the Missoula County Weed Board prior to plat filing. Provision for implementation of the Plan shall be included in a development covenant to be filed prior to plat filing, subject to OPG and County Attorney Office approval. *Subdivision Regulations Article 3-1(1)(B).*

Other Business

John Fletcher stated he supported the Living Wage Ordinance. His concern is that government have some guidelines and that there be on the record a discussion about the benefit that would accrue to the applicant versus the public interest. The appearance of such transactions is also important, it needs to "look right" in order to retain public confidence in government. He had made the statement to Commissioner Evans that the Commissioners do not have guidelines that provide them with functional criteria to assist them in determining if a particular public funding project is in the public interest and guidelines for some accountability. Commissioner Evans asked him to research the matter further and read the existing documentation. After having examining the material, he still stands by his statement. He would like to share that information with the Commissioners. He would prefer that all three Commissioners be present and could be available to discuss it at a later time, but preferably before the November 2nd election. He did not feel this was the appropriate time to present such information.

Acting Chairman Evans stated it was always appropriate to talk to one's government, but she did have a philosophical difference with him on the Living Wage issue.

There being no further business to come before the Board, the Commissioners were in recess at 2:05 p.m.

The following items were signed after the public meeting:

Certificate as to Resolution and Adopting Vote – The Commissioners signed a Certificate as to Resolution and Adopting Vote for a Resolution Relating to \$2,600,000 Tax and Revenue Anticipation Notes, Series 1999, awarding the sale thereof and approving the offering circular relating thereto.

Resolution – The Commissioners signed Resolution No. 99-075, a Resolution Relating to \$2,600,000 Tax and Revenue Anticipation Notes, Series 1999, awarding the sale thereof and approving the offering circular relating thereto. The bid of US Bancorp Piper Jaffray of Minneapolis, MN was accepted.

THURSDAY, OCTOBER 21, 1999

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

ADMINISTRATIVE MEETING

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

- 1) The Commissioners approved preparation of plans and getting quotes for the relocation of a seepage trench at the El Mar sewer lagoon. Cost estimate is \$12,600.00. The document was returned to Paul Webber, CAO, for further handling.
- 2) The Commissioners responded to a letter offer for purchase of the Stockyard Road property (old County shops) for \$1,500,000.00. The Commissioners countered with \$2,200,000.00 and the County would pay the SID and ½ of the off-site costs to a maximum of \$40,000.00. The counter offer was returned to Paul Webber, CAO, for further handling.
- 3) The Commissioners approved paying NACo membership dues in the amount of \$1,425.00.

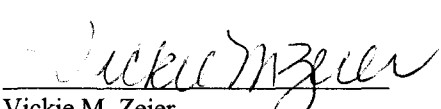
The minutes of the Administrative Meeting are on file in the Commissioners Office.


FRIDAY, OCTOBER 22, 1999

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was out of the office all day. In the morning, Commissioner Evans participated in the ribbon cutting ceremony at the newly remodeled K-Mart/Big K. In the evening, Commissioner Kennedy gave a welcome at the Human Rights Conference held at the Holiday Inn.

In the forenoon, Commissioner Carey accompanied County Surveyor Horace Brown on site inspections of Curlew Loop and Harlequin Loop located in the Missoula Development Park – Phase II, for the petitions to alter and abandon Curlew Loop and to abandon a portion of Harlequin Loop.

Claims List -- Commissioners Carey and Kennedy signed the Claims List, dated October 21, 1999, batch numbers 252, 253, 254, 255 and 258, with a grand total of \$85,043.97. The Claims List was returned to the Accounting Department.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, OCTOBER 25, 1999

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

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with Tischler and Associates, Inc. and the City of Missoula for an impact fee study for Missoula City and County. Duration of the Agreement is October 1, 1999 through completion of Tasks 1-9, estimated at approximately four months. The Agreement was returned to OPG for further signatures and handling.

TUESDAY, OCTOBER 26, 1999

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

ADMINISTRATIVE MEETING

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

Resolutions – The Commissioners signed three Resolutions:

1. Resolution No. 99-076, a resolution relating to \$2,600,000 tax and revenue anticipation notes, series 1999; fixing the form and details thereof, providing for the execution and delivery thereof, and providing for a debt service fund therefor;
2. Resolution No. 99-077, a budget amendment for the Office of Planning and Grants in the amount of \$93,990.00;
3. Resolution No. 99-079, removing an agricultural covenant for Parcel A of COS 2627, owned by Carol Mikesell.

Resolution – The Commissioners signed Resolution No. 99-078, fixing corrected mill levies for Missoula County for Fiscal Year 1999-2000:

RESOLUTION NO. 99-078
FIXING CORRECTED MILL LEVIES FOR MISSOULA COUNTY
FOR FISCAL YEAR 1999-2000

WHEREAS, on August 2, 1999, the Board of County Commissioners adopted Resolution No. 99-050 which set the Fiscal Year 1999-2000 budget and set mill levies based on projected mill values and reimbursements. Said Resolution provided that mill levies would be adjusted when actual mill values and reimbursement amounts were established; and

WHEREAS the Department of Revenue has now provided final mill values and reimbursement amounts;

WHEREAS clerical errors were found in some cash balances in the attachments to Resolution No. 99-050;

NOW, THEREFORE, BE IT RESOLVED that budgeted expenditures will not be increased from Resolution No. 99-050.

BE IT FURTHER RESOLVED that the mill levies necessary to fund that budget will be as follows:

<u>MISSOULA COUNTY-WIDE FUNDS</u>	<u>MILLS</u>	<u>ATTACHMENT</u>
General Fund	48.75	A and B
Bridge Fund	4.06	
Poor Fund	3.46	
Fair Fund	0.30	
Museum Fund	1.77	
Extension Fund	1.32	
Weed Fund	0.69	
Planning Fund	2.12	
District Court Fund	7.16	
Mental Health Fund	0.50	
Aging Fund	1.00	
Park/Recreation Fund	0.33	
Risk Management	2.00	
Child Daycare	0.32	
Library	5.25	
<u>SUB-TOTAL</u>	<u>79.03</u>	

MISSOULA COUNTY-WIDE DEBT SERVICE

Jail	9.16
G O Issue (Computer)	1.05
<u>SUB-TOTAL</u>	<u>10.21</u>
<u>TOTAL COUNTY-WIDE & DEBT SERVICE LEVIES</u>	<u>89.24</u>
Road Fund	14.92
Health Fund	6.99
Animal Control	0.93
<u>TOTAL COUNTY-ONLY LEVY</u>	<u>22.84</u>

Other items included:

1. The Commissioners approved \$1,500.00 for New Year's Eve emergency operations for the Office of Emergency Management.

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

WEDNESDAY, OCTOBER 27, 1999

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

PUBLIC MEETING – October 27, 1999

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioner Bill Carey, Commissioner Barbara Evans, County Clerk & Recorder/Treasurer Vickie Zeier and Chief Deputy Civil Attorney Michael Sehestedt. Mike Moderie, Project Engineer, Road Department, attended the meeting for County Surveyor Horace Brown who was on vacation.

Public Comment

None

Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$85,043.97. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Bid Awards:

Chair Kennedy stated that the Bid Awards would be considered as a group. A briefing and recommendation on each bid was read.

a. Upgrade Mainframe Computer (Information Services)

Information Services issued a bid request to upgrade the current mainframe computer. The current mainframe is 5 years old, and the money is coming out of the CIP (mainframe replacement) that all mainframe users contribute to each year. Unisys was the only vendor to respond. Information Services recommends that the bid be awarded to Unisys in the amount of \$215,730.00.

b. Four Vehicles (Motor Pool)

Bids were let on September 15, 1999. Bids were received from Bitterroot Motors, Ronan Auto Body, Grizzly Auto, Karl Tyler Chevrolet and DeMarois Olds. The lowest and best prices were received from Ronan and Grizzly. After visually inspecting, it was recommended that one car be purchased from Grizzly and three cars be purchased from Ronan Auto Body, for a total cost of \$52,507, which is \$1,493 below the budgeted amount.

Mike Moderie, Project Engineer, Road Department, presented a briefing on each of the five bids for the Road Department.

c. Fire Alarm (Road Department)

A fire alarm system needs to be installed at the Road Department per Risk Management/Insurance requirements. Bids were received from Big Sky Security in the amount of \$19,281.00 and 4-G Plumbing in the amount of \$18,542.00. It is the recommendation of the Road Department that the bid be awarded to 4-G Plumbing and Electrical in the amount of \$18,542.00. The budgeted amount for the project is \$15,000 and the remaining \$3,542 will be absorbed in the Surveyor's budget.

d. CTEP Project – 7th Street Walkway (Road Department)

The Road Department is performing walkway work on 7th Street – widening 7th Street from Clements Road to Hiberta Street. The work includes relocating a 642 foot irrigation canal and paving an eight foot shoulder on the south side of 7th Street. This is a project under the CTEP program. Bids were received from Green Diamond in the

amount of \$221,438.08; Keeney Construction in the amount of 216,758.00; Jensen Paving in the amount of \$216,363.97; and JTL in the amount of \$270,908.00. It is the recommendation of the Road Department that the bid be awarded to Jensen Paving in the amount of \$216,363.97. The total cost and the 13.42% match have been budgeted for.

e. CTEP Project – North/South Humble Walkway (Road Department)

The Road Department is performing walkway work on North-South-Humble widening/walkway. For North Avenue – Shoulder widening on south side from Humble Road, west to Maclay Bridge. For South Avenue – Shoulder widening on south side from Humble Road to 15 feet east of Woodlawn Road, separated from 150 feet east of Woodlawn Road to Clements Road. For Humble Road – Shoulder widening east side South Avenue to North Avenue. This is a project under the CTEP program. Bids were received from Green Diamond in the amount of \$104,578.21; Keeney Construction in the amount of \$112,128.13; Jensen Paving in the amount of \$105,736.45; and JTL in the amount of \$116,170.00. It is the recommendation of the Road Department that the bid be awarded to Green Diamond Contracting in the amount of \$104,578.21. The total cost and the 13.42% match have been budgeted for.

f. CMAQ Project – South Avenue Walkway (Road Department)

The Road Department is performing walkway work on South Avenue – Shoulder widening both sides of South Avenue from Reserve to 27th and separated on the south side from the Fort Road to 38th. This is a project under the CMAQ program. Bids were received from Green Diamond in the amount of \$185,934.77; Keeney Construction in the amount of \$132,449.82; Jensen Paving in the amount of \$154,272.60; and JTL in the amount of \$164,212.25. The low bid by Keeney Construction was rejected as it was incomplete. Keeney did not bid on the Overlay Item in Addendum #1 that they received and acknowledged. It is the recommendation of the Road Department that the bid be awarded to Jensen Paving in the amount of \$154,272.60. The total cost and the 13.42% match have been budgeted for.

g. CTEP Project – Ninemile Community Center Concrete Work (Road Department)

The Road Department is performing a landscaping project under the CTEP program. This is a bid for placing crush and pouring concrete slabs (patio and viewing platform) at the Ninemile Community Center. They have performed the earthwork and grading work. This is one of four items (parking lot gravel, topsoil, fencing, concrete viewing slab and patio) being contracted out. This is CTEP program project MDT STPE 32(19). It is the recommendation of the Road Department that the bid be awarded to Ken Henegar Contracting in the amount of \$6,500. The quote has been reviewed and approved by MDT-CTEP. The total cost and the 13.42% match have been budgeted for.

Commissioner Evans moved that the Board of County Commissioners approve the bids as recommended by the respective departments in the amounts specified. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Resolution: Prohibiting Hunting on County Property

Chair Kennedy stated this is a request to consider a policy to prohibit hunting on County property. The reason for the action is a result of recent requests to allow hunting on County property in the urban area which the Board feels is a safety issue. He stated this was not a hearing. It was a policy discussion among the County Commissioners. He invited anyone in the audience to comment on the proposed resolution. There were no comments.

Commissioner Carey stated the resolution included all County-owned property, no distinction was being made as to urban property.

Chair Kennedy stated that was correct, no distinction was being made.

Commissioner Evans stated the request received was for land in the Grant Creek area. After the work done to protect wildlife in this area, and its inhabited state, she felt it did not make sense to allow hunting. She would like to policy to include all County land for safety reasons.

Chair Kennedy asked Michael Sehestedt to comment on the liability issues for the County.

Michael Sehestedt stated he had a general concern. Most of the parcels the County owns are typically small and in close proximity to development. There is no mechanism in place to regulate the conduct of people who might choose to hunt on these lands if it were allowed. He felt that opening these lands would suggest they are a safe and suitable place to do that. If there was an accident or negligence of any kind, the County would have significant exposure. It is clearly within the County's rights as a property owner to restrict or otherwise prohibit hunting on County-owned property. As legal counsel from a liability perspective, the County would be well-advised to adopt this resolution.

Commissioner Evans moved that the Board of County Commissioners approve the Resolution Prohibiting Hunting on County-Owned Property, with a copy of the resolution sent to Fish Wildlife and Parks so they are aware of the action. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

The Commissioners then signed **Resolution No. 99-080: Prohibiting Hunting on County-Owned Property.**

WHEREAS, Missoula County owns undeveloped property in rural and suburban areas that may be considered inviting to prospective hunters; and

WHEREAS, Missoula County has received requests for permission to hunt on specific parcels owned by the County; and

WHEREAS, the County needs a consistent policy to address future requests for permission to hunt on certain specified properties;

NOW, THEREFORE, BE IT RESOLVED that, in order to protect the safety of others, Missoula County does hereby declare that hunting is prohibited on all County-owned properties.

ADOPTED THIS 27TH DAY OF OCTOBER, 1999.

Hearing: Intent to Create RSID #8467 (Paving in Double Arrow Subdivision) – Seeley Lake

Jesse Sattley, Administrative Aide, Public Works Office, presented the staff report.

This is a request to create of RSID #8467 for the paving of Whitetail Drive, Black Bear Drive, Timberlane Drive, Morrell Creek Drive, Cougar Court, Laurel Court, Lynx Court, Chipmonk Court and Badger Court in Double Arrow Subdivision Phase II of Seeley Lake, Montana.

The petition phase of the RSID was waived by the Board of County Commissioners on September 20, 1999 and advanced the RSID into the adoption of a Resolution of Intention to Create RSID #8467 and the public hearing. The hearing notice was published, posted and mailed as required. During the on-going discussions concerning engineering estimates of cost, district boundaries and budgets, many changes have occurred. The Homeowners Association disagrees with the creation of the district in its present form and now protests. The two main items mentioned in the protest are:

1. Number of lots in the district. The protests refer to the number of lots in the district as 116, naming Lot #99 as three individual lots. However, in 1994 the Board of County Commissioners reviewed and approved a subdivision amendment to Double Arrow Ranch Phase II known as the Mood Addition to the Amended Double Arrow Ranch Phase II – Lots 109, 110 and 111, now known as Lot 1 of the Mood Addition, therefore consolidating the three lots into one lot. The total lots included in the proposed RSID are 114.
2. Cost Estimate of the Total RSID. The Bond Counsel's estimate of costs will increase by \$2,000, for a total of \$5,000, to cover expenses of also providing an Offering Circular to go with the Notice of Sale of Bonds, a Preliminary Official Statement and a Final Official Statement on the tax exempt status of the bonds and cost of issuance. Also, Bond Counsel recommends that a 3% discount be included. All of these Bond Counsel services are normal costs associated with marketable bonds and competitive bidding from investment companies and have been included in past RSIDs of this type and nature.

The district, as it stands today, has an estimated total cost not to exceed \$234,000. The total estimated cost per individual lot or tract, excluding interest, is \$2,052.62 and is payable over a term of ten years. There are 114 lots in the district.

Letters of protest were received and are under review by the Chief Deputy County Attorney. A protest response letter prepared by the County Engineer will be mailed to the freeholders in the district.

Jesse Sattley stated he had no recommendation on creation of this RSID at this time.

Chair Kennedy: I think that based on what we have here with regard to the protest that came from the Landowners Association, there are questions in there that we would like to spend some time answering. I'll explain to you how we might do that. The first part of this will be a hearing, it will be strictly a one way affair, that is you can make comments to us about your concerns or any issue that you wish with respect to that RSID. In your comments there may be questions for us and we will not answer those questions as you ask them but we will wait until the hearing has concluded, been concluded, and then we will have some discussion with our engineering people and everyone else to see whether we can satisfactorily answer those questions for you. So what we'd like to do then is to ... Yes, Barbara?

Commissioner Evans: Before we take the public testimony I would like to know whether they've seen the letter from Mike Moderie. If not, I'd like Mike to give the basic comments prior to taking testimony so they know what our situation is so they can ask questions about it. There might be something said in that letter that might affect their thinking and I'd just as soon that they have the opportunity to have that information before they testify.

Chair Kennedy: That's fine. That's fine. So what we'd like to do then is open the public hearing and invite comment on RSID #8467 for the Double Arrow paving in Seeley Lake. So anyone who'd like to make a comment on that RSID, please come forward, identify yourselves for the record, we'd like to hear what you have to say.

An audience member asked if they might have a moment to read the letter from Mike Moderie.

Chair Kennedy: Certainly, yes you can.

Michael Sehestedt: I wonder, maybe we could move to the other item.

Commissioner Evans: That would be good.

Chair Kennedy: Let's do that. I tell you what, we'll just hold this in abeyance, we'll go to our next item, it will give you plenty of time.

Commissioner Evans: And then we'll come back to it.

Hearing: Petition to Abandon Clearwater Shortline Railroad Right-of-Way on Highway 12 West

This is a petition to abandon "The Clearwater Shortline Railroad right-of-way from the Northwest corner of Tract 1 of Certificate of Survey 2842 located in Section 26, Township 12 North, Range 22 West to the southeast corner of the North 1/2 of the Northeast 1/4 of Section 35, Township 12 North, Range 22 West, along the Lewis and Clark Highway 12 West located in Missoula County, Montana."

The reasons for the request are as follows:

1. The right-of-way described is not necessary or useful for right-of-way purposes.
2. The right-of-way constitutes a cloud on the title of the property involved.

The following landowners have been notified: George & Joan Hale, 23995 Lolo Creek Road, Lolo, MT 59847.

Michael Sehestedt: This will be a fairly brief staff report on what is a comparatively complex fact situation. Essentially in the early 1900's, 1908-1909, there was an endeavor called the Clearwater Shortline Railroad. They acquired right-of-way and constructed some track in the Lolo Creek valley. This passed into the ownership of the Northern Pacific Railroad which operated a logging railroad, I believe, for a period of time. Eventually they abandoned railroad operations and in 1930 deeded by quit claim deed to Missoula County the property that was used for railroad right-of-way purposes for the Clearwater Shortline. Basically, it involves property running up Lolo Creek a distance of approximately 20 miles. The particular property, or particular request you have before you, involves a portion of that property, of the property interests that were deeded to us by the railroad as it is adjacent to the property owned by George and Joan Hale. There are a number of issues regarding state of title to each particular piece, because the railroad acquired different tenancy, some of this I believe is an easement interest for railroad purposes only, some of it is arguably property that was conveyed to the railroad in fee and then conveyed on to us in the same manner. Our acceptance was for right-of-way, or railroad right-of-way up Lolo Creek. I am still in the process of trying to ascertain precise state of title. We know where the property is but what our interest in it is a whole other set of questions. My recommendation to you would be that you hear the petition for vacation and that we follow our ordinary procedure on vacation petitions and following the close of the hearing, a Commissioner and County Surveyor conduct a site inspection to determine the advisability or desirability of the vacation and report back to the Board. By that point in time I would hope to have resolved at least as regards this particular piece of property, the various factual and legal issues that will bear on your decision. I would note that this is significant because our property interest under that deed extends up and down the creek a goodly distance and impacts a significant number of other properties. With that background, I think at this point it's a standard vacation hearing and go forward from there.

Chair Kennedy: Thank you, Michael. We will open the hearing and again, a decision will not be made on this today. We have to review this, not only with counsel, but have a site review with our County Surveyor and at least one member of the Board of County Commissioners. So we'll set some date when the decision will be rendered. So with that, we'll open the public hearing on the petition to abandon the Clearwater Shortline Railroad right-of-way on Highway 12 West and invite anyone who wishes to, to comment on that particular issue. Is there anyone here who would like to comment on it.

Commissioner Evans: And if you have something to say that might be helpful.

Michael Sehestedt: George, you might want to ...

George Hale: Well, yes, I'd like to have it vacated.

Chair Kennedy: Sir, would you identify yourself for the record, please.

George Hale: Excuse me. I'm George Hale. We bought the property back in 1988 and at the time we purchased it, we purchased it in two different parcels. We were not aware that there was a right-of-way there at the time that we purchased it. We did notice, when we got the title policy, there was a piece of paper there that was like the one the lady was looking at a while ago, Barbara was looking at, that had a picture showing a railroad right-of-way and at that time we came into the County Courthouse here and we went down, I believe it was to the County Assessors Office, and we asked them if we needed to petition to have that right-of-way there vacated and after looking and checking on it, they came back and they said no, that the railroad had been abandoned and that the right-of-way, the property, had been deeded back to the adjacent property owners. So, from that time until about a little over a month ago, we assumed that there was no problem there and we had been paying taxes on the property all these years and using it and caring for it as our own property. When we had a pending sale on it and there was a title search, the attorney for the people that were purchasing it made an extraordinary effort in coming down to the County and digging through everything and finally found out that in fact this problem did exist and it had never been resolved, had never been taken care of. And I can also tell you that there's a lot of other people that are affected by that, that have no idea that they're affected by it, they don't even know that it's there. It is a real problem and right now it's clouding our issue and our sale. The people who are interested in purchasing it want this resolved before they purchase it and I don't blame them. I think it does need to be resolved. I don't know exactly how to resolve it but I would really like to see it resolved.

Chair Kennedy: Thank you Mr. Hale. Would you mind if I asked you a question? When you purchased the property, the title insurance showed that exception on it. Did you inquire at that time or some later time?

George Hale: The title on the first parcel that we bought, which is a 24.04, that was second, no, excuse me, the second parcel, it didn't show anything on there. We noticed it on the other parcel of ground which is the 13.36 and I forget the exact sizes, there's four parcels altogether, and we noticed it on there. We read our, we read the title policy and we came down to look and see what it said. But in the title policy, it said, I think it said Page 70. I didn't bring our title insurance with us today, maybe it might be here. But at any rate we checked in there and there was no mention of our property and a gentlemen named Dan Worrell was the Realtor that worked with us on this and he said, "Well, let's just go and get a petition to vacate the right-of-way," because we didn't know what the process was or anything and so he was here with us and we went to the office there and that was our intention was to petition to have it vacated and we were just told it had been abandoned and had been deeded back to the adjacent property owners so we felt that it was a closed issue.

Chair Kennedy: Okay, but my question was, all of this happened prior to your purchase of the property?

George Hale: Before I purchased it?

Chair Kennedy: Yes.

George Hale: No.

Chair Kennedy: So you purchased the property with whatever it was in the title report and then after the purchase then you investigated the meaning of that provision in the title report. Is that correct?

George Hale: Yes sir, we saw it on there and the reason that we did that, maybe you'll be the one that goes out to look at the property, but basically, it isn't someplace that you could build a railroad. I suppose that you could, but I don't think that the County or State or anybody else would allow it today because of the proximity of the creek there. In order to use that right-of-way, you'd have to destroy the creek and the creek has already been moved, the creek bed has already been moved now. I don't know how it existed before it was moved, but I've been told that the creek is not in its original bed at this point in time. But, yeah, essentially it wasn't something that could be used as a right-of-way and, but we were concerned about it so we thought we would come in and check on it and find out if in fact, because we knew there wasn't going to be a railroad come through, and what the process was to have it removed. That was when then we were told that it was already removed.

Chair Kennedy: Thank you, Mr. Hale. Is there anyone else who would like to speak on this issue? Then we'll close the public hearing. Again, the process is that we will review this with the Road Department, one or more of the Commissioners will review it. We'll also review it with counsel and make a decision at some later time. Normally we set the time for that and I don't know whether we're prepared to do that today, Michael, or not?

Michael Sehestedt: I would suggest that you set it for a week hence if you can do your inspection in that time period. I will work diligently focused just on this particular segment of the problem to try to have a recommendation to you.

Chair Kennedy: Okay, then what we'll do is we'll set for decision the date of November 3, 1999, that's a week from today, at this Public Hearing at 1:30 in the afternoon. In the meantime, we'll review it and we'll make a site visit and we'll visit with counsel to determine how we're going to proceed with it. We're wanting to resolve it too, we know that it extends well beyond your lands.

George Hale: Would I be able to go with you or be out there when you're doing the site visit.

Chair Kennedy: Sure, we have no problem with that.

Michael Sehestedt: I suspect that it probably would, usually helps on these where the road isn't a monument, to have the property owner on site with you. I would guess you guys would schedule it sometime later.

Chair Kennedy: We'll check with our calendar and try to arrange, perhaps we can even do that today. Maybe the thing to do, so you don't have to sit through the rest of the hearing, is just to visit with our appointment secretary out here and we can arrange a date and a time so you'll know when it is before you leave. Again, you're excused unless you want to stay for the remainder of the meeting.

Hearing: Intent to Create RSID #8467 (Paving in Double Arrow Subdivision) – Seeley Lake

Chair Kennedy: We'll return to the other public hearing. Again, we did open the public hearing on the creation of RSID #8467, so with that we'd invite comment from any and all who would like to speak on that issue.

Larry Marx: I'm Larry Marx, I'm president of the Landowners Association for that Phase on the Double Arrow Ranch. There's several things I'd like to say, first of all the Landowners Association is excited about working with the County to get this project completed. It's been a real pain for us to have a road that's used by more than even our association, it's a kind of a main thoroughfare from the grocery store back into town. So it's a dust control problem for the people that live there. It's also a maintenance problem, I'm sure, for the County because it's always rutted up and we also know that if the landowners were to go in and do the entire project by themselves we couldn't afford to do that. So, we've been anxious to work with the County and you've been working with us. Our protest is of frustration. In the engineer's estimate, he talks about the first cost estimate not being endorsed or approved by this office but we went to County officials to get that first estimate. And we canvassed our owners to see if they were in favor of creating an SID to get this work done and found out that they were not only excited about, that it was originally not the entire amount that's on here now. They were not only excited about it but they thought if, you know, the rest of the landowners thought that it was a possibility of getting that kind of a deal that we should do the cul-de-sacs and get that whole area done we wouldn't have to worry about the dust control and those kind of things. We got an estimate from the County, apparently not endorsed. We went to the membership, got the approval, came back and said we want to create the SID. And we were told that we needed to go get this in writing, bring it back to the Commissioners and then we could get it approved. So, we went back and got a second estimate and they said this is the final estimate. And this came, again, from the County officials. And they agreed that they would come back to us and let us know if there were to be any changes and the landowners, before they came back to the Board of Directors, the landowners and that association got a letter from the County saying that there was going to be the SID and this hearing and the estimate was increased again without our knowledge. That's why we protested. It's not because we want to stop the project, we do not want to stop the project. We want the Commissioners to know that the head does not know what the tail is doing and it's a terrible frustration for us. And there are others that have been involved, I haven't been involved for the entire two years, in all of this process, several of the gentlemen here have been, and they would like to speak to that too. As president of the association I want you to know that we're not trying to kill the project, we want it desperately. We would really like to see it going, we want to cooperate with you, but, we would like to know that when we're given a cost, that's what the cost is, we would like to have what we were told was the final estimate be the final estimate. And we would not like to have things like the fifth article in here where it says, "It was agreed that the approach culvert would be paid for separately by the landowners." The last time we met and discussed this issue, first of all let me tell you that the County sent someone up to the, to this subdivision, to decide how many culverts were to be put in. They drove all the way from Missoula to Seeley, counted the number of lots and driveways that were there and said that's how many culverts then you, but in talking to the people from the County that maintain those roads, they were told that they only needed like three or four, only one little road that has a problem with water coming down it. Seeley is sand and gravel and water goes straight down, there's no ditches that run in that subdivision. They came back and said, "Okay, we'll take half of those out." There was never, there was a discussion, however, I shouldn't say there was

never a discussion, there was a discussion about the culverts, the culverts were included and I know that because we talked about whether, one lady brought up the fact at that meeting, she said, "Well I had to pay for mine, shouldn't the rest of the people have to pay for theirs." And they said, "Well that's not the way we did the estimate." Half the culverts were taken out of the estimate, no consideration whether they were needed or not. They just took half of them out knowing full well that they only needed two or three. And then we get a letter today saying it was agreed that the culverts would be paid for separately by the landowners. It was never discussed. So what I'm telling you is that we're terribly frustrated and we're talking about a very small amount of money, were talking about \$7 or so per year, per landowner, and we certainly don't want that to kill this RSID. But we want you to know that we're terribly frustrated and the Commissioners need to find out whose handling what. The people that are working there need to, somehow, know what the process is so that when people like us come to get something like this done, there's somebody in charge. I appreciate your time.

Chair Kennedy. Thank you Mr. Marx. Next person please.

Al Slight: My name's Al Slight and I'm a landowner and have been on the Board of Directors of the Phase II Landowners Association since the inception of the association. I would just like to clarify a couple of things. Number 1, the first paragraph where, of Mr. Moderie's letter, where he says the first cost estimate distributed by the landowners was not endorsed or approved by this office, that's correct, it was not endorsed or approved as such. It was based, however, on solemn commitments made by the Road Department before the cost estimates were figured up. It was based upon information obtained from the Road Department including Mr. Moderie, as to the cost of various items. It was based upon the understanding as to what would be done by the landowners association and what would be done by the Road Department. Subsequent to doing the survey of our owners, of our members, we had a number of conversations with the Road Department and, but the first knowledge that we had that we were not going to obtain what had been agreed upon, was the receipt of Exhibit B, the first cost estimate that was issued by the County. And that was issued on August 3. And when we saw it, we literally exploded. And we had a number of conversation with various representatives of the Road Department and at that time, the then president of the association, Mr. Copps, told Horace Brown that in view of the fact that that estimate was in excess of twice the amount that we had considered we were going to be paying for this and twice the amount which the landowners had been advised would be the cost, as nearly as we could determine, that we would not proceed further with the road project under those considerations. It was at that time agreed that the Road Department would come up with another cost estimate and there was a lot, there's a tremendous amount of history, in fact, we've prepared a 10-page document to go as an appendix with our protest. We did not submit it because the fact of the matter is that, while it did us a little good to vent somewhat, it really didn't go to the assume, we didn't want to take up your time. I'm afraid, however, that we're going to have to get into some of that with our landowners and due to the fact that this October 27th letter of Mr. Moderie's being sent to the landowners. But, be that as it may, to get back to the second cost estimate prepared by the Road Department, that came out on August 17th. That knocked off approximately \$30,000 off the original estimate, which was in the amount of \$292,000. And the association determined at that time they would not proceed and could not proceed with the RSID under those circumstances. And we had a board meeting, we took appropriate action, we called the Road Department, Horace Brown, that day and told him we were not going to proceed further. Subsequently, on August 28th, we had our Board Meeting and Mr. Moderie came at that Board Meeting and spoke before the members. During the course of that meeting, Mr. Moderie said that certain accommodations could be made, that the County would in fact provide for one-third of the cushion, which was a very big item, cost item, that they would cut half of the culverts off arbitrarily in order to reduce that cost and come up with the revised cost estimate. Subsequently, we pressed the various representatives of the Road Department for this cost estimate because it was very important to get this out right now so we could piggy-back on a State project that was going to go in this summer. They were going to do a big road project down in Seeley Lake and we wanted to get involved in that so we'd get a lower cost on the amount of asphalt. Eventually, and when I say eventually, we did get the third estimate on September 2nd. And that came out at \$224,979. On the basis of that estimate, we said we would go back to the landowners and in effect conduct a mail ballot on it, which we did. And we told them in our letter and the ballot that that would be the absolute maximum cost, because that is what was represented to us at that time. And we told representatives of the Road Department, all of them, not just one or more, that we had to have it: A) in writing, so there would be no misunderstanding; B) we wanted it coming from their office, it was nothing that we were going to prepare so that we couldn't have any of this business about, well, there's a misunderstanding or something; and C) that we wanted to have it as soon as possible and we wanted to make sure that it was the maximum amount so that we could make that representation to the landowners, which we did. Based upon those representations in that letter, we received again support from our members. We'd lost quite a bit of support from the first survey we took to the second one, but still we had more than a majority that were still in favor of it and rightly so in our view, and we pushed it, I mean we didn't just plop it out there, we told them we thought it was a good deal and it should be accepted. Subsequent to the issuance of the third estimate, the County Commissioners issued a memorandum to Mr. Sattley advising him to go ahead and proceed with the necessary resolution and in that memo asked that he work with the Homeowners Association in order to work out the details and that sort of things. I had a number of conversations with Mr. Sattley during that time which I made memos to file afterwards in view of some of our earlier experiences and during the course of these conversations I pointed out that it was not 114 lots but it was 116 lots. And during at least two conversations, one back earlier in the summer, I also pointed out the fact that there was this one lot, one area, that had been joined, but there were actually three lots and that that so called subdivision, so called Mood Subdivision, this involves Lots 109, 110 and 111, that that subdivision was never entered into, the association had nothing to do with that, the landowners, either our association, which was not in existence, that's Phase II Landowners Association, or its predecessor which is Double Arrow Ranch Landowners Association (DARLOA), that was the predecessor association. They had nothing to do with the establishment of that so called Mood Subdivision and as a matter of fact they were told they couldn't even participate in it and I have the files from that. In any event, I raised this issue with Mr. Sattley and he advised me at the very first conversation that, yes, those three lots would be included. Subsequently, we were never advised that they were not to be included, we were never advised that they were going to be counted as one lot. Now, for your information, those three lots pay three separate dues, they each are assessed and they pay dues for the association. The previous owners to the Wohls, who were the Moods, attempted to not pay the assessment and they subsequently did after when the property was liened. They had been treated as three lots for all purposes with the sole exception of taxes, as far as the association is concerned. As a matter of fact, to this day, we are, we have an exchange of letters with the Mood's attorneys that one of the lots, Lot 111, will be, we will permit them to expand the market onto that lot and use it for commercial purposes which is otherwise, would otherwise be prohibited under our covenants because it's a business and that is prohibited. In any event, we never had any conversations with Mr. Sattley, although I called him and asked him and I was under the understanding that he had also been told or he'd had a conversation with Mr. Sehestedt that he was to discuss this matter, we were to get together. I finally got a hold of him on a

Monday and he told me, that would be the 4th of October, he said, I told him, I asked him if we were going to get together and what was the status of it. He said at that time that he was sending the resolution up tomorrow, that would be the 5th of October and I said well am I going to see that. He said, "I'll send you a copy," and I said, "Well we've got, if you send it up with 114 lots, it's wrong," and he said, "Well that can be ironed out at the hearing," at this hearing and I said, "Well I'll talk to Horace Brown about it." Horace Brown said yes it could be ironed out at this hearing. And that's how that matter was handled. He told me at that time that the one issue, the one item of the Bond Counsel fee had been increased by \$2,000, he told me that. He did not tell me that the total cost was going to be increased by some \$9,000. He did not tell me that. The first we knew about it is when we received the notice from the County, which was apparently sent out to all of the landowners and Mr. Sattley never, incidentally, never sent me a copy of the proposed resolution. I got it through the mail from the County as did the other landowners. Now, as to the balance of the, I don't know what to call it, whether it be a response of the Road Department to our protest or what, but almost all of things that are in there are really immaterial because we in fact, by our action in accepting their third cost estimate, you know, while we didn't like it, we accepted the fact that these, that those costs would be increased. And we recognize the County's contribution and we appreciate the County's contribution, and it is a substantial contribution. The problem is that it's more than what we told our people and we're in a, say we're in an embarrassing position is to put it very mildly, because the landowners that review that, all they can say, and I've had a comment or two about it, is how dumb can you be, you know, it happened to you once and you let it happen again. That's the position that we're in and while it isn't a tremendous amount of money, it is a substantial amount, it's close to \$10,000 and these only a hundred and, the landowners of Phase II, there's only 107 lot owners involved, but it is a substantial amount of money to them because if, the reason I say substantial, it may not sound like much, but I'll tell you, Phase II Landowners Association came into being because DARLOA, the predecessor association, charged us \$50 for a snowplowing fee which was not called for under the covenants and as a result of that we got out of the association.

Commissioner Evans: So you're saying that \$9,000 might be irritating, versus the \$50 that caused you to pull out? I think I got that, okay, I got that part.

Al Slaight: And you know while I heard Mr. Sattley say that the 3% discount be included, this is the 3% discount on the bonds, is a normal cost, it may be a normal cost but it was never told to me or anybody from the association that this normal cost was going to be included. So, I question how normal that cost is under those circumstances. I think that's really all that I have to say. I don't know whether anybody else from our organization wants to talk or not.

Chair Kennedy: Thank you Mr. Slaight.

Jack Copps: Mr. Chairman, for the record, my name is Jack Copps. I'm the immediate past president of the Phase II Landowners Association and I intend to be very brief because this has already taken a considerable amount of your time. And I will do so by first of all saying to you that we have made every effort to thank the County for its willingness to be a contributor as we have moved forward with this project and our newsletters to our membership would indicate that. We have specifically thanked the County repeatedly for that. Secondly, I just want to say to you, I want to in fact beg you, not to allow misinformation to be sent back out to our lot owners. If you look at Bullet Number 5, on the letter from Mr. Satterly, it is said with emphasis, it's on the front page, it is said with emphasis and it is underlined, "It was agreed that the approach culverts would be paid for separately by the landowners." There is absolutely no evidence to support that. There is not a single member of the Board of Directors that would support that. There is no minutes from the annual meeting that would support that. The minutes from the annual meeting would indicate that one lot owner brought it to the attention of the membership and that there was no action taken. We just simply asked that we not send misinformation to our members, it just causes continuing problems, frankly, for both of us.

Chair Kennedy: Thank you Mr. Copps. Next person please. Anyone else who would like to say something.

Ron Cox: My name is Ron Cox, I'm a resident of the subdivision and live on Morrell Creek Drive. I'd just like to emphasize a couple of points. First of all, I don't believe these are normal subdivision roads we're talking about there. Really an arterial road, a transportation route that serves three times the number of parcels that are actually involved in the thing, so I think it behooves the County to, I think it's a public road and therefore these contributed costs by the County are completely appropriate and so I'd hope you would do all you can to help make this project come about. And the other thing that bothers me a little bit just about the process, we've already dealt with some of the frustrations just dealing with human nature and that's, I guess, that's par for the course. But it almost seems like this is put together with an open blank check type of approach. Every estimate in here is as high as we can imagine with the thought being that well we don't want the bid to come a penny over because that kibosh's the whole thing. It just seems like that's a, that's leading to inflation of costs. You know, if we have a \$30 a ton cost for asphalt in here, knowing that \$27 is a normal, with good conditions it might be \$23 or \$25, a contractor, you know, this is public information, what contractor is going to come in much below \$30. So, you know, some of the process here I think needs to be looked at too, as well as just the principals of human relationships, I think that's what a lot of the problem here. I got, I just, like two points, I ask you to do what you can to help the project and the second point, I think, is take a little closer look at the whole operation of this RSID accommodation from whose involved and what they know about it and what kind of commitments they can make and now I guess a lot of this is been verbal and that's kind of the tradition of Montana, it's a handshake and we agreed to this thing and then we agree to participate with you and then the next thing we get blindsided by some letter that we never ever was aware of before and cost changed, so just those kind of things that I think are the root of the whole, all the frustrations, and I'm just. Thank you.

Chair Kennedy: Thank you Mr. Cox. Is there anyone else that would like to speak to this issue? Anyone at all? Okay, well before we close the hearing, what we'll do is perhaps go through some of these issues which I think are really important to talk about. One thing I, you know, I'm not going to attempt to apologize for all the, any misinformation that you may have gotten on the project. I will, at the same time, attempt to tell you that some of the difficulties that are encountered in arriving at estimates for work and representing those to anyone before a job is done. And it's kind of like someone says, "Well, how much does a car cost?" and someone throws a number out there and then all of a sudden after the number is there then they say, "Well, gee, I really want a Buick and it looks like this price is not enough for a Buick, I'm going get a, you know, Toyota or something out of it." So, there is difficulty in arriving at estimates before we actually have a bid from a contractor. And what we did today in Number 4, we had seven items that were bid items and the contractor was looking at the same specifications, looked at it so substantially differently that their prices were

enormously different. So until we get an actual cost from a contractor, it is very difficult, since we're not contractors, to give accurate estimates on this kind of work. We do the very best we can and sometimes that's simply not good enough and particularly when we make a representation that it is accurate to other people and for that I can only apologize. Let me tell you something about the Road Department and the problems. The Road Department has all kinds of problems and one of the biggest problems they have is that considering the amount of roads we have to maintain in the County we simply cannot collect enough taxes to operate, maintain, repair and replace those roads. We simply can't do it, it isn't there. And the reason there isn't enough is because the voters of the County simply will not give us permission to raise additional revenues to take care of those roads, so that's a serious problem here, so we're seeing a consequence of we voters not allowing additional taxes to be collected to take care of those roads. That is a consequence. Now, the County, at the same time, made a commitment to participate in this project partially because of some of the reasons that you mentioned, partially because we do have a high operation and maintenance costs up there, we recognize that. It isn't used exclusively by the residents that ultimately will be asked to pay for it, we recognize that. We want, we feel it's in the best interest of everyone to have a good road system in that area for other reasons, like safety reasons and so on. And so we, that is the Road Department, made a conscious decision to participate on some levels where we, as a Board of County Commissioners, have a policy that we simply would not do that anymore. Three years ago, this Board took the decision that we would no longer participate at all in SIDs for roads, we would not do it. Past that, the Road Department has made an exception using their own budgetary funds and their own manpower, to participate here. And so what they have done is something that is contrary to Board of County Commissioner policy and they've done it for the reasons that we've already enumerated and that you know. So what we have then up there is a project that is difficult, it's difficult to not only understand because the number of lots and all that, which is a legal issue which we'll get counsel to give us advice on how to sort it out, and it really doesn't matter whether we agree or disagree on the 116 or the 114, what's going to matter is that we have a legal RSID and we'll have an opinion from our lawyer as to which one of those or which of those lots can be assessed and cannot be assessed and from that we'll get the number, whatever the number is, and we just have to agree to it and it may be, maybe it's 117, maybe it's 120, maybe it's 112, I don't know what the answer is but we will make that determination. So I think what we have then at the very end is the very best job that we can do forgetting about all of the bad information and the way we arrived at it, to come up with a cost which we acknowledge is slightly conservative, but not overly conservative. And understanding that if the project comes in higher than that, there are only two choices: 1) to abandon the project; or 2) to go back again to the same assesses and ask them to pick up the difference, which sometimes could be really difficult. So we purposely estimate that in a way where we avoid both of those, hopefully, both of those happenings. It very well could be that those prices will be lower, and that will result in lower assessments because we simply will not assess for something that we don't build. Now the one issue about public information on estimating, I will tell you this, my background is this, I've done this for 35 years, I understand it, I'm a consulting engineer, environmental scientist, I worked in construction all my life, and I would tell you that any contractor who is aware of a pre-bid estimate that's done by an engineer and not a contractor, will soon be out of business. They have to bid the job, not the estimate nor their competitors, they have to bid the job as they see it and so the estimates that go out are meaningless to them. An example of this is that we today awarded a contract to Johnson Brothers to do something on 7th Street out in Target Range. We opened the bid on that same project two years ago and our estimate was about 40% below what the project ultimately was constructed, so clearly the contractor didn't pay any attention to our estimate. He bid what he thought that project would cost. Subsequently, we've added on the bid, we went through the whole process again and we re-examined what the costs were, we cut some out of the project but again our estimate was much higher than it was a few years ago. So there's no real relationship between an engineer's estimate and an actual construction bid, there really isn't, even though sometimes we think there might be. The long and the short of this is that it's going to cost, in our best estimate right now, all things considered, \$234,000, and if the project is going to go forward, it needs to get spread, that amount needs to get spread among those landowners up there and that does not take into account the overall dollar costs that we have already spent or will spend on that project. So that's what it really comes down to and I know that's hard, it's very hard, and it looks like we've got some internal housekeeping to take of. And I believe that we've done a long way toward taking care of that because we've now formed a Public Works Department which gives some, a different emphasis on this kind of thing and in the past we've unfairly burdened our Surveyor's Department and asked them to do something that is outside the requirements of the law. If you look at law, the law is very specific on what a surveying department can do and we're asking it to do things that it simply can't or have the facility to do and we're starting to see a consequence of that. But we've taking a decision to change all of that and hopefully much of this internal stuff will get taken care of and the next time we have a big SID we won't have the same criticisms or problems. So hopefully that's some explanation there. Before ... yeah, I'll take your question.

Larry Marx: Larry Marx again, the president of the landowners association. The problem we've got here, that I see it, I've been a contractor for 20 years too so I understand what's going on, but the problem is that we were required to go to our membership and now and the second time we had egg on our face and had to go back to them a second time. The reason that we felt that we were forced to protest was because now, if we said, "County go ahead," we're saying that without having the approval of our members and what we're asking you to do is to revise that estimate so that we don't have to go back and say, "Hey, they screwed up one more time." We're looking out for you, we're asking you to look out for us, we lost a lot of creditability when we had to go back the second time and said, "Hey, it's twice as much as we told you it would be," after the men had spent that much time trying to get the estimate, so what we're asking is, is there enough in there that you can revise that estimate to what we're given as our final estimate. The one that we used to get the last approval from our members. Can you reduce that to that level so that we don't have to go back to them again. That's what we're really asking.

Chair Kennedy: I would say this, response, and my colleagues can respond if they would like to, and that is if the estimate is \$234,000, we certainly can reduce it to the \$225,000, however, if you think, or anyone thinks, that if the bids come in such that the \$234,000 is needed, that the County is going to subsidize that, I think, at least for me, the answer has to be no. So you understand then, that the project may die as a result.

Larry Marx: We've known that from the beginning.

Chair Kennedy: Yeah, now in addition to that, I don't believe there's been a wheel turned on design of this, has there?

Mike Moderie: No.

Chair Kennedy: Okay, so design is a significant cost and what is of concern also to us that we don't want to be in the position of exhausting our people who are assigned to other projects, taking them off those other projects to design a project that will not go forward and so I would be hesitant to ask these people to design a project with a prospect that it would be underfunded and would die, they've got too much other work to do, they really have a lot of work to do, and we can't assign them to something that will not go forward, so that presents a problem to us by reducing it. Barbara?

Commissioner Evans: Part of my problem with doing that is your indication that you were going to protest this gave me a fair amount of concern and I'm the one who asked that this letter be written. And I gather that what you thought when you saw this letter was that we were beating our own drum, while the purpose was if people were going to protest it, we wanted them all to know what we were offering and that next time it may not come in at this price and you may not get to do it at all. So that was our purpose was information. It was not to beat our own drum, simply to tell folks what the facts were so that they wouldn't protest and expect to get it cheaper next time. Now if we get to the point here where we ask these folks to put together a project that we don't think can be done for the amount of money that you're asking, it may be that we're wasting their time to do that, and we have to assess whether or not that makes good sense for the use of our personnel. So, can you understand our problem here? I understand yours, but I also wonder if Mr. Marx, as a contractor for 20 years, you might not have told the folks, "Now these are estimates and things could change when we get down to the size and price of rocks."

Larry Marx: Actually, when I give them a price on a project and I said this is what the price was going to be, and they were ready to sign on the line, I didn't come back the next day and give them a higher price. I stood to my word and said, "That's the price that you get, today, tomorrow and the next day."

Commissioner Evans: But is that after you've looked at the design of the project and you've estimated the costs of the rocks and costs of everything?

Larry Marx: Barbara, you're missing the point, the problem is that when we're told and we represent it to our members, you're forcing us into either saying scrap the project or we go back to the members for a third time. We've represented to them that this is the highest cost.

Commissioner Evans: And I didn't miss your point at all. What I'm trying to say is based on the things that Michael has said and my understanding of things that, before we have a design, before we have a final anything, when we tell you it's likely to cost X amount of dollars, in our mind we believe that it's likely to cost about that. But we haven't looked at the design because we haven't done it yet. We haven't looked at the price of the asphalt, etc., and if it comes in a little higher, I realize that puts you guys in a tough spot and maybe we screwed up, okay, I'm not going to say we did or we didn't, all I know is that very often the price of things change before we get to awarding a bid and we'll certainly ask Mr. Moderie to talk a little bit about how that happens so that I'll understand it and you'll understand it. Jack?

Jack Copps: Barbara, I ... Jack Copps. I don't disagree at all with what you say. I think this all comes down to I guess a request from us that you look at this matter internally to see if, in fact ...

Commissioner Evans: And we got that.

Jack Copps: To see if, in fact, something can be done to improve the relations that exist between who are trying to establish an RSID and the people at the County level. We do have at your disposal, we have 10 pages of notes which include mention of every single phone call that was made to every person in this County, including supervisors, and what the nature of that phone call was and what the estimates were and what the promises were. That's in our handwriting, but there are 10 pages if you're interested in looking at that. Mr. Marx said at the very beginning that it is the interest, it is our interest as a landowners association to proceed and it still is our interest to proceed and it is also our interest in thanking this County for its contributions that it is making to this effort because very frankly, our landowners association would not approve without the contributions that are there and so we are very appreciative of that.

Commissioner Evans: Okay. So, may I ask then, if it is absolutely impossible for us to assume we can get this job done for \$225,000 or whatever the figure is, are you telling us that your folks will protest it or they will not?

Jack Copps: It is my understanding that the time now is, the time is now to protest.

Commissioner Evans: There's 30 days to protest, is there not?

Michael Sehestedt: You know, the ...

Jack Copps: The majority of the, the majority of the people in Phase II, the majority, are still supporting this project. They haven't seen all of the latest costs but they still support the project even when it nearly doubled in size and cost, they support that. I would speculate that they would continue to support the advancement of this project, we're too far along and frankly people are excited about this project moving forward and they want it to move forward.

Commissioner Evans: So this is not a resolution of intention, this is the actual creation?

Michael Sehestedt: Yep.

Commissioner Evans: I assumed it was a resolution of intention, so I thought there was another 30 days, I'm sorry.

Jack Copps: This is an actual creation.

Commissioner Evans: Okay, I'm sorry.

Jack Copps: We are not here to shut down, to say to shut it down.

Commissioner Evans: Okay.

Chair Kennedy: Okay, Mr. Copps, thank you. I think that we do have a little legal issue here though we have to talk about, whether or not the association can even protest this project, because the association is not an assessee.

Jack Copps: Right.

Chair Kennedy: And so we know that and so we have to discuss that with counsel.

Al Slaight: May I be heard on that point, that narrow view, of course. The protest is signed by the Board members as board members of the association, also individually as property owners. So, we would have standing, in my opinion. It would be my view that since we are property owners, we could, we'd have standing.

Chair Kennedy: You have an interesting argument. But, Michael, I'd ask you about that?

Michael Sehestedt: Well, there's, you know, there's one, there's no question that the board members, because they're property owners, can protest on their own. Because of the status and because of the way the covenants are written, you know I, they probably have at least some authorization to act as agents of the other homeowners which would make the protest valid. But the covenants say that when 50% are built out, everybody waives the right to protest, so assuming that waiver is valid, it could happen even if we had individually signed protests from 100 property owners. I don't know that we need to go there, I mean, what I'm hearing is that probably more than the actual dollars is a sense of betrayal personally and the feeling that they, as representatives, have given information to their people that has turned out to be inaccurate. Concern on our side is that if we go through and create the RSID and use a smaller dollar amount, there's a possibility, probability, that the bids will come in and the total cost will be under the \$233,000 that we've got, but over the \$225,000 that they feel was represented. I'm wondering if there may not be a solution here. One, we're going into this and we'll be able to bid it at the start of a construction season at a time when we usually get really advantageous prices and we'll be able to time our entry in the bidding if we do this right. They've got the benefit of that project going on up in Seeley Lake which may provide some additional saving, it's all really hard to estimate, but, you know, I can talk about changing the lot numbers in a minute. I would just throw this out as a possible solution, that we go ahead and create the RSID using these numbers but with a commitment that when the bids are received, if the total cost is going to exceed the \$225,000, we have a check back with the homeowners association and say, "Here we are, you know, the actual price is \$228,000, we want to go." It's a way, I think, for us to get this off dead center, to move it forward, if we get lucky and the estimates, the actual bids come in under the estimates, then we don't have an issue we have to fight about at all, because it's going to come in at the \$225,000. If we get the bids, we've got 30 days to review and decide whether or not we're going to accept them and if that puts us over the price, then we have an urgent check back with you guys on behalf of the homeowners association, say, "Look, here's the reality check, here's the dollars." We're absolutely capped at the \$234,000, I mean, if it comes in and we're going to go over that, we're all SOL and the project's dead. If it comes in under \$225,000 on this scenario, we just go build the sucker and we're done. If we come in-between those two numbers, then we agree, just as a matter of community and to address your concerns with the process, that we contact the board of the homeowners association and say, "Look, here are the numbers, go or no go?" And you guys can do a check. I don't know that that's acceptable to the Commissioners, but it seems to me to be a way to maybe we dodge the whole thing. The good possibility is they come in under \$225,000, the bad possibility is they come in over \$234,000. In either of those cases, this isn't an issue. It's only an issue ...

Commissioner Evans: An option that I just suggested to Commissioner Kennedy is that we tell the Surveyor's Office to design the road to come in at \$225,000. If that means it's going to be a little bit narrower, it's going to be a little bit narrower. And Mike's probably going to throw rocks at me for that.

Mike Moderie: We've already done that.

Chair Kennedy: Now wait, before we go down that route, road, again, we're talking here about an expensive project. We're not talking about a \$234,000, we're talking about a project that really should, under best design standards, cost more than a half a million dollars. We all know that. And our engineers have done a remarkable job to figure out every way they could to get this down so that it would work, so that it would meet your needs and so that it would also meet our needs and it resulted, again, in this huge contribution over there on the Road Department, which, by the way, this Board doesn't necessarily agree with, and, or the Board of County Commissioners doesn't ...

Commissioner Evans: Wait a minute, doesn't agree with what?

Chair Kennedy: The County contribution for SIDs.

Commissioner Evans: Oh, well, some of us do.

Chair Kennedy: And so I think we're, I think we're as down as far as we can get. Commissioner Evans suggested that maybe we can get down further. I just don't know whether that's possible. I would say this though, that if there's any cutting on there, it shouldn't be at the expense of individual assessees, you should benefit if there's going to be cutting, each one should benefit by the amount that they're being assessed. So it won't be cutting out a cul-de-sac to meet the price, for example, it would be equal cutting of all of the assessees work, if that's possible, and I simply don't know whether it is.

Michael Sehestedt: Which gave me an immediate coronary. I saw us shaving a foot off the road width through the whole thing and I thought, I don't think so.

Chair Kennedy: It's not probable in my mind, it really isn't.

Commissioner Evans: See, I'm not an engineer or a contractor.



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Michael Sehestedt: I, you know, I don't know, and I realize that we're going to be putting, if we decide to go with this, there's going to be a design effort that's got a dollar value probably of around \$20,000-\$25,000, and it, you know, what are, you know, our actual out of pocket, but it simply is a resource, it can't be used for something else, but ...

Chair Kennedy: I, our counsel offers a way around this, it still creates some heartburn for the County because of the enormous up front costs that the County has to invest in terms of time diverted from other projects if this project doesn't proceed. That's a big problem for us, you know, we simply can't afford to allow these people to go out and spend time on a project that won't work, that won't go forward. And so as much as I like what I heard counsel say, I don't know that I can agree with it, I think we have to have a commitment that the project needs to be built before we commit our people to spend the money that it takes to design it and get it underway.

Commissioner Evans: So, the question I asked you a few minutes ago was whether or not the petition we got in recently counts as protests, and if so, are there enough signatures to kill this project and are we spinning our wheels here in spite of a protest.

Michael Sehestedt: In my legal judgment, and I'll probably get a chance to find out whether or not it's correct, in view of the waiver in the ...

Commissioner Evans: Percentage.

Michael Sehestedt: ... the build percentage and waiver of right of protest, I think that we could do it in the face of this protest. I, you know, I don't ...

Commissioner Evans: Is that protest containing enough signatures to stop this project?

Michael Sehestedt: Well, I don't think I need to even resolve that issue, whether they're acting as agent or not, because of the waiver in the article, the articles.

Chair Kennedy: Yeah, and I'd add to that, I think if counsel is correct, and we did discuss this some months ago, then it's entirely possible that the entire cost, that the added \$134,000, could be added to the overall cost of the improvement without permission of the assesses, because there is that waiver. And we're not suggesting that that even be considered, all I'm saying is that it appears that this project could get constructed regardless of the cost and assessed against the benefited people up there without any opportunity for protest at all and the only reason I bring that up is that I think you have a legitimate concern about the information that's gone back and forth. And I'm not going to back away from saying I believe you do. I think we've undertaken some steps to take care of that problem and I would also say that we had, and probably still have, an opportunity to assess a project that's maybe worth a half a million dollars and we choose not too for lots of reasons and so I think under the circumstances we probably got the most bang for the buck and we can get there, even though the road is bumpy, we'll forget the bumps in a couple of years and we really ought to go forward with this. But you better believe, we heard you.

Michael Sehestedt: Let me stick in the second issue that they raised, that really is a legal issue, is the number of lots. And, while the Mood Subdivision aggregated three of Double Arrow lots into a single lot, it became a triple size lot and we could assess that as though it were three separate lots for RSID purposes. So, we could bring it up to the 116, probably equity would suggest that we do that. It appears that the owners do not treat it as a single lot for all purposes themselves. They pay three assessments on it and they're proposing to get permission or approval to use essentially one of the former lots for commercial purposes. I guess I don't think they've got a legitimate beef if they're assessed as though they were the original three lots.

Chair Kennedy: So, we'll, then we'll, unless there's another comment, is there any other comments before we close the hearing? Michael?

Mike Moderie: I want to address the approach culverts. It was my recollection from that meeting we had up there to, we had a discussion on the approach culverts and I thought everybody wanted to pay individually. I guess that's not the case. So, I'll strike that from this letter and that cost is already in the bid.

Chair Kennedy: Okay, thank you. Then we'll close the hearing and ask for further discussion or a motion on the request to create RSID #8467, paving of Whitetail Drive, Black Bear Drive, Timberlane Drive, Morrell Creek Drive, Cougar Court, Laurel Court, Lynx Court, Chipmonk Court and Badger Court in Double Arrow Subdivision Phase II of Seeley Lake, Montana.

Commissioner Evans: I have a question, at 116?

Chair Kennedy: Yes, acknowledging an overall total project cost not to exceed \$234,000 assessed over 10 years on 116 lots.

Commissioner Evans: I have a question.

Chair Kennedy: Commissioner Evans.

Commissioner Evans: If we go ahead and create this, and I think that's what we're going to do, would it help you folks if we took the letter that Mike was kind enough to write, and we either redo it or we put some caveats in there that explain how this happened, so that you guys don't feel you've got the egg on your face, it clear it's on our face.

Al Slaight: If I may be heard on that, I think you'd do everybody a favor if you didn't send it. I don't think ...

Commissioner Evans: Oh, well, I'm perfectly happy not sending it.



Al Slaight: I just don't think it's necessary because once you get into it, he said, I said, and then, you know, one thing requires a response. I think that would be helpful.

Commissioner Evans: Okay.

Chair Kennedy: Thank you Mr. Slaight. Okay, is there discussion, further discussion or a motion of the Board.

Commissioner Evans: I move we approve.

Chair Kennedy: Is there a second?

Commissioner Carey: Second.

Chair Kennedy: Boy, that was simple. Any further discussion? All those in favor, signify by saying "Aye."

Commissioner Evans: Aye.

Commissioner Carey: Aye.

Chair Kennedy: Aye. Thank you very much. This is tough and, you know, this better be the last tough RSID we do, I'll tell you that. We've got a big one, with about 2,500 or so assessesees, coming up out in the west plains on sewers, and just imagine, this one's 116, what that one would be if we had this kind of baggage to carry forward. So, we're going to clean this up, believe me, you've got our word.

Commissioner Evans: We do apologize to you for the problems that you've had.

Al Slaight: Well, we want to thank you again, I know we've all indicated our appreciation, but we want to thank you again for all the County has done.

Chair Kennedy: Thank you for having to come down here and spend your time, we appreciate your efforts as well. Anything further to come before the Board? Oh wait, Mr. Hale, you came back. Do you want something from us before we adjourn?

Michael Sehestedt: I'm going to talk with Bob Sewell.

Chair Kennedy: Okay, so then we're adjourned.

There being no further business to come before the Board, the Commissioners were in recess at 2:55 p.m.

THURSDAY, OCTOBER 28, 1999

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

Claims List – The Commissioners signed the Claims List, dated October 27, 1999, batch numbers 263, 264, 267 and 268, with a grand total of \$59,196.26; and the Claims List, dated October 28, 1999, batch numbers 273, 274, 275 and 278, with a grand total of \$216,972.69. The Claims Lists were returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Extension – The Commissioners approved a six-month extension of the final plat submittal for Williams Addition Subdivision (formerly known as Edwards Addition). The new filing deadline is April 23, 2000, and a letter was sent to Gilbert Larson of DJ&A.

Commercial Buy-Sell Agreement – The Commissioners signed a Commercial Buy-Sell Agreement with Retail Property Acquisition, LLC for the old County Shops property, with a purchase price of \$2,200,000.00. The Agreement was returned to Bill McQuirk of Lambros Real Estate for further handling.

Contract – The Commissioners signed a Contract with Ken Henegar Contracting to place cushion material and pour concrete slabs at the Ninemile Community Center. Total cost is \$6,500.00. Work will be completed by November 15, 1999. (The bid was awarded at the October 27 public meeting.)

Other items included:

- 1) The Commissioners designated Bill Carey to serve on the Urban County Committee, which will meet periodically to discuss urban county issues. Howard Gipe of Flathead County was notified of this designation.
- 2) The Commissioners approved a request by Sheriff Doug Chase to allow the public two days to tour the old jail.
- 3) The Commissioners approved (2-1 vote) a claim for \$700.00 from OPG to purchase bus passes for 35 employees.

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

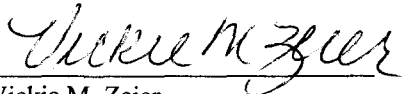
FRIDAY, OCTOBER 29, 1999

The Board of County Commissioners met in regular session; all three members were present in the forenoon. Commissioners Evans and Kennedy were out of the office all afternoon. Commissioner Carey attended a Settlement Conference with Hal Luttschwager, Risk Manager, during the day.

Claims List -- Commissioners Kennedy and Carey signed the Claims List, dated October 28, 1999, batch numbers 272, 277, 279, 280, 281 and 282, with a grand total of \$162,481.46. The Claims List was returned to the Accounting Department.

Task Order -- Chair Kennedy signed a Task Order with the Montana Department of Public Health and Human Services for a program focusing on health and safety concerns relating to infants, toddlers and children in child care in Montana -- the Healthy Child Care Montana program. Performance schedule is July 1, 1999 through June 30, 2000. Compensation shall be \$57,821.00. The Task Order was returned to the Health Department for further handling.

Task Order -- Chair Kennedy signed a Task Order with the Montana Department of Public Health and Human Services to provide the USDA's WIC program to residents of Missoula County. Total amount payable is \$348,349.00 plus \$5,444.00 for state sponsored travel. Term of the Task Order is October 1, 1999 through September 30, 2000. The Task Order was returned to the Health Department for further handling.



Vickie M. Zeier
Clerk & Recorder



Michael Kennedy, Chair
Board of County Commissioners

MONDAY, NOVEMBER 1, 1999

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

Extension Letter – At a departmental meeting with the Office of Planning and Grants, the Commissioners approved an extension of the final plat submittal and modification of the phasing plan for Hillcrest Heights Subdivision, making the new filing deadline for Phase II no later than March 27, 2002, and Phase III no later than March 27, 2007. A letter was sent to Dick Ainsworth of Professional Consultants Inc.

Plat and Improvements Agreement – The Commissioners signed the plat and improvements agreement for Williams Addition, an urban residential subdivision located in the NE1/4 of Section 21, T14N R20W, PMM, Missoula County, a total area of 19.43 acres, with the owner/developer being Williams Development, LLP.

TUESDAY, NOVEMBER 2, 1999

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

In the afternoon, Commissioner Kennedy accompanied County Surveyor Horace Brown on a site inspection for the request to abandon the Clearwater Shortline Railroad right-of-way on Highway 12 West of Lolo.

Monthly Report – Chair Kennedy examined, approved and ordered filed the Report of the Clerk of District Court, Kathleen Breuer, for the month of October, 1999.

Plat -- The Commissioners signed the plat for Akin Acres, a minor rural residential subdivision located in the E ½ of Section 19, T. 20 N., R 16 W., PMM, Missoula County, a total of 23.35 acres, with the owners/developers being Robert W. and Betty M. Akin and Plum Creek Timberlands LP (Portion A).

ADMINISTRATIVE MEETING

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

Memorandums of Agreement - The Commissioners signed two Memorandums of Agreement with the following:

1. United Way of Missoula, with funds received from the Office of Juvenile Justice, for United Way to employ a part-time staff member to coordinate activities for the Missoula Forum for Children and Youth. Also, to educate the public about strategies to prevent youth drug and alcohol abuse and various ways to become involved in Forum activities. Value of Agreement is \$19,400.00. Term of Agreement is October 1, 1999 through September 30, 2000.
2. The Missoula City-County Health Department funded by a Federal grant, to increase public awareness of Alliance activities throughout Missoula. Value of Agreement is \$7,125.00. Term of Agreement is October 1, 1999 through September 30, 2000. The documents were returned to the Health Department for further signing and handling.

Contract Agreement – The Commissioners signed a contract with Fence Masters, Inc. of Missoula, awarding a bid for placing 230 linear feet of wood post and split rail fence at the Ninemile Community Center. This is a project under the CTEP program. Value of contract is \$1,730.00. Term of contract is November 1, 1999 through November 30, 1999. If materials are delayed, it will be completed 30 calendar days after the date when the materials are received.

Closing Documents – The Commissioners signed closing documents for the sale of property located at 315 West Pine Street in Missoula to John C. Schulte. This property was sold for the asking price of \$125,000.00. The documents were returned to First Montana Title & Escrow, Inc. for further handling.

Real Property Lease – The Commissioners signed and approved a lease for the property located at 315 West Pine Street, Lot 3 and the East ½ of Lot 4 in Block 18 of C.P. Higgins Addition to the City of Missoula, Missoula, Montana, according to the official recorded plat thereof. The term of the lease is month to month for a minimum of 3 months, commencing on November 2, 1999. Rent for the term of this lease will be \$1,000.00 per month. The Lessee is John C. Schulte of 111 N. Higgins Avenue, Suite 502, Missoula, Montana 59802.

Agreement – Chair Kennedy signed a consolidated agreement with Unisys, with the contract for bid awarded on October 27, 1999, for the upgrade of the main frame computer. The document was returned to Jim Dolezal in Information Systems for further signature and handling.

Resolutions – The Commissioners signed three Resolutions:

1. Resolution No. 99-081, a Budget Amendment for the Health Department in the amount of \$10,000.00 for FY2000.
2. Resolution No. 99-082, an Amendment to the Missoula County Zoning Resolution for the property described as a portion of the NE1/4 of Section 21, T14N, R20W, PMM, located north of the Wye area, east of Jim and Mary's RV Park and adjacent to Spring Meadows Subdivision. This Amendment shall rezone the above property from CC-1 (Commercial) to C-RR3 (Residential).

3. Resolution No. 99-083, fixing tax levies for Missoula County for FY1999-2000:

RESOLUTION NO. 99-083
FIXING TAX LEVIES FOR MISSOULA COUNTY
FOR FISCAL YEAR 1999-2000

WHEREAS, the Board of County Commissioners of Missoula County, Montana, has approved and adopted the budget for Fiscal Year 1999-2000, 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 \$149,709 County-wide, and a value of \$74,381 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 1999-2000 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	48.75	A and B
Bridge Fund	4.06	
Poor Fund	3.46	
Fair Fund	0.30	
Museum Fund	1.77	
Extension Fund	1.32	
Weed Fund	0.69	
Planning Fund	2.12	
District Court Fund	7.16	
Mental Health Fund	0.50	
Aging Fund	1.00	
Park/Recreation Fund	0.33	
Risk Management	2.00	
Child Daycare	0.32	
Open Space	0	
Library	5.25	
<u>SUB-TOTAL</u>	<u>79.03</u>	
<u>MISSOULA COUNTY-WIDE DEBT SERVICE</u>		
Jail	9.16	
G O Issue (Computer)	1.05	
<u>SUB-TOTAL</u>	<u>10.21</u>	
<u>TOTAL COUNTYWIDE & DEBT SERVICE LEVIES</u>	<u>89.24</u>	
Road Fund	14.92	
Health Fund	6.99	
Animal Control	.93	
<u>TOTAL COUNTY-ONLY LEVY</u>	<u>22.84</u>	
CITY OF MISSOULA	146.63	
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	28.19	
MISSOULA RURAL	62.14	
ARLEE/JOCKO VALLEY RURAL	10.45	
FLORENCE-CARLTON RURAL	17.34	
EAST MISSOULA RURAL	13.71	
FRENCHTOWN RURAL	27.83	
SEELEY LAKE	30.51	
OTHER SPECIAL DISTRICT LEVIES		
SOIL CONSERVATION	1.45	
SOS HEALTH CENTER	3.37	
CARLTON CEMETERY	1.45	

MISSOULA URBAN TRANSIT	10.37
SEELEY LAKE CEMETERY	4.30

SPECIAL ASSESSMENT DISTRICTS

LOLO MOSQUITO	VARIOUS (SEE ATTACHMENT)
JOCKO IRRIGATION	VARIOUS (SEE ATTACHMENT)
FRENCHTOWN IRRIGATION	VARIOUS (SEE ATTACHMENT)
MISSOULA IRRIGATION	VARIOUS (SEE ATTACHMENT)
FOREST FIRE PROTECTION ASSN	VARIOUS (SEE ATTACHMENT)
ELK MEADOWS WATER DISTRICT	VARIOUS (SEE ATTACHMENT)
SEELEY LAKE REFUSE DISTRICT	VARIOUS (SEE ATTACHMENT)
BIG FLAT IRRIGATION	VARIOUS (SEE ATTACHMENT)
LORRAINE SO. WATER DISTRICT	VARIOUS (SEE ATTACHMENT)
CLINTON IRRIGATION	VARIOUS (SEE ATTACHMENT)
GREENOUGH/POTOMAC VOLUNTEER FIRE	VARIOUS (SEE ATTACHMENT)

SPECIAL IMPROVEMENT DISTRICTS

VARIOUS (SEE ATTACHMENT)

WATER QUALITY DISTRICT

VARIOUS (SEE ATTACHMENT)

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

WEDNESDAY, NOVEMBER 3, 1999

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

In the afternoon, the Commissioners participated in the ribbon cutting ceremony for the new Detention Center on Mullan Road.

Claims Lists -- Commissioners Carey and Kennedy signed the Claims List, dated November 3, 1999, batch number 285, with a grand total of \$17,581.36. Commissioners Evans and Kennedy signed the Claims List, dated November 3, 1999, batch numbers 287, 290, 291 and 292, with a grand total \$73,218.27. The Claims Lists were returned to the Accounting Department.

Standard Agreement -- Chair Kennedy signed a Standard Agreement with the Montana Department of Transportation, Traffic Safety Bureau, to compensate for overtime patrol salaries and benefits in the Sheriff's Office for seat belt use enforcement. Term of the Agreement October 15, 1999 through September 30, 2000. Payment shall not exceed \$10,000.00. The document was returned to Don Morman in the Sheriff's Department for further handling.

PUBLIC MEETING -- November 3, 1999

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

Public Comment -- None

Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$438,650.41. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Decision: Petition to Abandon Clearwater Shortline Railroad right-of-way on Highway 12 West

Chair Kennedy stated the decision on the petition has been postponed to November 10, 1999.

Decision: Petition to Alter and Abandon Curlew Loop -- Missoula Development Park, Phase II

Barb Martens, Projects Coordinator, presented the staff report.

This is a petition to alter and abandon "Curlew Loop located in the subdivision known as the Missoula Development Park Phase 2 in Section 1, Township 13 North, Range 20 West, PMM, Missoula County, Montana. As a part of the filing of the subdivision known as the Missoula Development Park Phase 2B, the road right-of-way would be altered and reconfigured to abandon the loop portion of the road and to construct two cul-de-sacs within the relocated right-of-way."

Another process that is going on at the same time is a petition to change the name of the cul-de-sac on the eastern part from Curlew Loop to Trumpeter Way. The County and Sun Mountain Sports have signed the petition to allow that name change to occur.

The public hearing on this petition was held October 13, 1999. A site inspection was conducted by Commissioner Carey and County Surveyor Horace Brown on October 22, 1999.

Horace Brown stated the road is not needed, it is only a small loop. By putting in the two cul-de-sacs it gives more property to the adjacent landowners that need it for their operations.

Commissioner Carey had nothing further to add to Horace Brown's report.

Commissioner Evans moved that the Board of County Commissioners approve the petition to alter and abandon "Curlew Loop located in the subdivision known as the Missoula Development Park Phase 2 in Section 1, Township 13 North, Range 20 West, PMM, Missoula County, Montana. As a part of the filing of the subdivision known as the Missoula Development Park Phase 2B, the road right-of-way would be altered and reconfigured to abandon the loop portion of the road and to construct two cul-de-sacs within the relocated right-of-way." Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing: Petition to Vacate Alley in Block 12 of Eddy Addition

This is a petition to abandon "The alley in Block 12 of Eddy Addition located in Section 21, Township 13 North, Range 19 West, Missoula County, Montana."

The reasons for the request are as follows:

1. This alley was plotted in Eddy Addition, but has never been operational.
2. There are several vacated alleys and streets in this area of Eddy Addition.
3. Ferris and Anna Marie Clouse own all of the land in Block 12 of Eddy Addition, and they would like to expand the greenhouse business that is located on the Russell Street side of Block 12 to extend through the plotted alley.
4. The Clouses would also like to locate a new well for the greenhouse where the alley is plotted.
5. Abandoning this alley would bring the land back onto the tax roles and the County would begin to collect taxes on land that have never been used as an alley.

The following landowners have been notified: Ferris and Anna Marie Clouse, 1400 Wyoming Street, Missoula, MT 59801.

Anna Marie Clouse stated she was the property owner but deferred to her son, Sean Clouse, for comment.

Sean Clouse stated they had petitioned to close the alley in Block 12 of Eddy Addition. The whole block has Russell Street frontage. Currently they have a greenhouse business there which they would like to expand across where the alley is currently plotted. It has never been an operational alley. There are also many other vacated streets and alleys in the area.

Michael Sehestedt stated that following today's hearing, a site inspection of the proposed vacation by one Commissioner and the County Surveyor would be conducted. They will report back to the whole Board, who can then take action on the petition.

Chair Kennedy opened the public hearing.

Horace Brown stated this area is entirely surrounded by the City. The only reason this request is before the County is because it is a greenhouse, which is agricultural use.

Chair Kennedy asked if the City was asked to comment on the petition.

Colleen Dowdall stated that agency comment was not normally asked for on this type of petition. Any citizen is entitled to come in and petition the Board for this process. During the site inspection and investigation process, comments from the City could be solicited.

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

Chair Kennedy stated the decision on this petition would be scheduled for next Wednesday, November 10, 1999. In the meantime, one Commissioner and Surveyor Brown would conduct a site inspection and report back to the Board.

Anna Marie Clouse stated they needed to drill a well for the greenhouse and the location of the well would be within the alley to be vacated.

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

THURSDAY, NOVEMBER 4, 1999

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

ADMINISTRATIVE MEETING

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

Service Contract – The Commissioners signed a Service Contract with Higgins Consulting Engineers to provide fueling facility inspection sampling services to insure compliance with the Oxygenated Fuels Program. The term of the contract is November 1, 1999 through February 29, 2000. The amount shall not exceed \$2,499.00. The document was returned to the Health Department for further signing and handling.

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with the Human Resource Council, District XI, to offer displaced homemakers of Missoula County basic needs assistance through the Community Exchange Program. The term of the Agreement is October 1, 1999 through June 30, 2000. The total value is \$6,000.00.

Other items included:

- 1) Application for Tax Abatement – Chair Kennedy signed the following five documents to verify the receipt of \$2,600,000.00 Tax and Revenue Anticipation Notes, Series 1999, of the County, from U.S. Bancorp Piper Jaffray Inc., of Minneapolis, Minnesota which will be delivered to The Depository Trust Company, in New York, New York by Davidson Trust Company of Great Falls, Montana:
 1. Certificate and Receipt of County Clerk and Recorder/Treasurer
 2. Affidavit as to Signatures of County Officers
 3. Officer's Certificate
 4. Request Authorization
 5. Information Return for tax-exempt Governmental Obligations
- 2) Contract – The Commissioners approved a year's Contract in the amount of \$15,737.00 (same as the Mill Value) to compensate the Missoula Rural Fire District for funds lost by being in the Tax Increment Financing District.
- 3) The Commissioners approved a request from Mike Marbut to name a new cul-de-sac in the Development Park "Grizzly Court."

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


FRIDAY, NOVEMBER 5, 1999

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, Commissioners Carey and Evans and Rachel Vielleux, County Superintendent of Schools canvassed the City Primary Election, which was held November 2, 1999. The Commissioners were all out of the office in the afternoon.

Claims List – The Commissioners signed the Claims List, dated November 5, 1999, batch numbers 293, 294 and 295, with a grand total of \$247,605.23. The Claims List was returned to the Accounting Department.

Monthly Report – Chair Kennedy examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen Orzech, for the month ending October 29, 1999.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, NOVEMBER 8, 1999

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

Claims List -- Commissioners Kennedy and Evans signed the Claims List, dated November 8, 1999, batch number 305, with a grand total of \$2,496.00. The Claims List was returned to the Accounting Department.

Monthly Reports -- Chair Kennedy examined, approved and ordered filed the Monthly Reconciliation Reports of Justice Court 1, John Odlin, for the month ending September 30, 1999 and the month ending October 31, 1999; and the Report of the Sheriff, Douglas Chase, for the month ending October 29, 1999.

Applications for Issuance of Replacement Warrants -- Chair Kennedy approved two Applications for Issuance of Replacement Warrants:

1. Naming Congressional Quarterly as principal for Warrant #342032, issued January 27, 1999 on the Missoula County 2220 Fund in the amount of \$145.70, not received in the mail;
2. Naming Cellular One as principal for Warrant # 353413, issued September 9, 1999 on the Missoula County 2270 Fund in the amount of \$29.99, not received in the mail.

TUESDAY, NOVEMBER 9, 1999

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

Plat – The Commissioners signed a plat for the Missoula Development Park; Phase 1B, the platting of Park 12 and the amended plat of Missoula Development Park Phase 1, a subdivision located in Section 35, T14N, R20W, PMM, Missoula County, a total of 26.24 acres; with the owners of record being Missoula County Airport Industrial District.

Payroll Transmittal – The Commissioners signed a Payroll Transmittal for Pay Period 21, with a total Missoula County payroll of \$690,277.97. The document was returned to the Auditor's office.

ADMINISTRATIVE MEETING

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

Service Contract – The Commissioners signed a Service Contract with Land & Water Consulting in order to improve the chemical database for the Local Emergency Planning Committee. The term of the contract is November 9, 1999 through September 30, 2000. The total amount shall not exceed \$9,841.00.

Modification of Agreement – Chair Kennedy signed a Modification of Agreement with the Department of Environmental Quality to extend the time to submit final facility plans for wastewater treatment works for the Golden West area and the El Mar Estates area. The term of the Agreement is November 9, 1999 through January 1, 2000. The document was forwarded to DEQ in Helena.

Agreement – The Commissioners signed an Agreement with the Montana Department of Transportation to transfer CTEP funds to the State to allow construction of a trail from the Seeley Store south to the Double Arrow Museum. The document was returned to Horace Brown, County Surveyor, for further handling.

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

WEDNESDAY, NOVEMBER 10, 1999

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

Claims List -- Commissioners Carey and Kennedy signed the Claims List, dated November 10, 1999, batch numbers 289, 297, 299, 301, 302 and 306, with a grand total of \$248,024.00. The Commissioners signed the Claims List, dated November 10, 1999, batch number 300, with a grand total of \$8,199.25. The Claims Lists were returned to the Accounting Department.

Contract – Chair Kennedy signed a Contract with the Montana State Department of Public Health and Human Services to provide funding for the Missoula County Domestic Violence Program (YWCA Shelter Grant). The term of the Contract is October 1, 1999 through September 30, 2000, unless the Contract is terminated earlier pursuant to Section 20. The amount of the Contract shall not exceed \$36,362.00. The document was returned to Leslie McClintock in OPG for further handling.

Contract – The Commissioners signed a Contract and an Addendum to Contract between Community Medical Center and Partnership Health Center, in order for Community Medical Center to provide Partnership Health Center with medical services through the use of certified physician assistants. The reimbursement rate shall be \$5 for weekday call and \$25 for weekend call. Call back fee will be \$35 per hour. The Commissioners also signed a Supplemental Staffing Agreement between Interim Health Care, Inc. and Partnership Health Center in order for Interim Health Care, Inc. to provide supplemental nursing personnel to Partnership Health Center. The term of the Contract is October 1, 1999 through October 1, 2000. The document was returned to Janet Schafer at PHC for further handling.

Resolution – The Commissioners signed Resolution No. 99-084, an Alteration and Vacation of a portion of Curlew Loop and a Name Change to Curlew Court and Trumpeter Court.

PUBLIC MEETING – November 10, 1999

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

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$597,125.06. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Bid Award: Video Arraignment (Sheriff's Department)

This bid for video arraignment was designed per the instructions of the Commissioners, District Court Judges, Justice Court Judges and City Court. The bid was advertised in accordance with bidding policy. Only one bid was received from U.S. West. That bid was in the amount of \$82,497.89. If the County wishes, there is funding for a 3-year extended warranty, which would be an additional \$16,974.69. The original program was for only one unit at the detention facility. During the meeting, the group decided to add another station. While this was not budgeted, funding reserves, coupled with the State purchasing the video mug shot, will result in sufficient savings to cover the increase.

Chair Kennedy stated this bid was for two video stations, one at the new Detention Facility and one at the Courthouse. The amount was in excess of the budget request because the original request was for a single station. Even with the added cost, through some cooperation with the state, the amount can be funded by both the funding sources available and some reserves established. There is also a bid request for three years-added warranties in the amount of \$16,974.69. He had some questions about the added warranty and asked to delay action until a representative from the Sheriff's Department could be present.

Commissioner Evans was not clear if three years or four years of warranty were being request.

Chair Kennedy stated the basic bid price includes a one-year warranty. Did the added warranty mean there would be three years warranty added for a total of four years or did it mean three years for the \$16,974.69? That question needs to be clarified before action can be taken. A representative from the Sheriff's Department was contacted to come to the meeting and answer the questions. Action was tabled until that representative was present.

Decision: Petition to Vacate Alley in Block 12 of Eddy Addition

This is a petition to abandon "The alley in Block 12 of Eddy Addition located in Section 21, Township 13 North, Range 19 West, Missoula County, Montana."

The reasons for the request are as follows:

1. This alley was plotted in Eddy Addition, but has never been operational.
2. There are several vacated alleys and streets in this area of Eddy Addition.
3. Ferris and Anna Marie Clouse own all of the land in Block 12 of Eddy Addition, and they would like to expand the greenhouse business that is located on the Russell Street side of Block 12 to extend through the plotted alley.
4. The Clouses would also like to locate a new well for the greenhouse where the alley is plotted.
5. Abandoning this alley would bring the land back onto the tax roles and the County would begin to collect taxes on land that has never been used as an alley.

The public hearing on this matter was held Wednesday, November 3, 1999. A site inspection was conducted by County Surveyor Horace Brown and Commissioner Barbara Evans on Monday, November 8, 1999.

Horace Brown stated the Clouses own the whole block this alley runs through and are already using it. He saw no reason not to vacate the alley so they can use it legally.

Commissioner Evans concurred with Horace Brown's report and added that if the alley would ever be put in, it would be very close to their garage and might affect the alignment of the alley. It would also be close to the south end of the Russell Street Bridge and an access would likely not be granted.

Commissioner Evans moved that the Board of County Commissioners approve the request to abandon the alley in Block 12 of Eddy Addition located in Section 21, Township 13 North, Range 19 West, Missoula County, Montana. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Decision: Petition to Abandon Clearwater Shortline Railroad right-of-way on Highway 12 West – Postponed from November 3, 1999

This is a petition to abandon "The Clearwater Shortline Railroad right-of-way from the Northwest corner of Tract 1 of Certificate of Survey 2842 located in Section 26, Township 12 North, Range 22 West to the Southeast corner of the north 1/2 of the northeast 1/4 of Section 35, Township 12 North, Range 22 West, along the Lewis and Clark Highway 12 West located in Missoula County, Montana."

The reasons for the request are as follows:

1. The right-of-way described is not necessary or useful for right-of-way purposes.
2. The right-of-way constitutes a cloud on the title of the property involved.

The public hearing on this matter was held on Wednesday, October 27, 1999. A site inspection was conducted by Commissioner Michael Kennedy and County Surveyor Horace Brown on Tuesday, November 2, 1999.

Michael Sehestedt stated this process involves some fairly complicated title issue consideration. First American Title, among others, is involved in the process and they have gone to outside counsel to get an opinion as to the state of title to this particular part of the old Shortline Railroad. This will hopefully provide some guidance as to the balance of the railroad right-of-way. That opinion by outside counsel has not been completed as of this time. He recommended the decision be continued to the next public meeting. Mr. Hale, the property owner, is present today and would like to meet with the Commissioner following the Public Meeting.

Chair Kennedy stated the next Public Meeting is scheduled for November 24, 1999. He asked counsel if the decision had to be made at a Public Meeting?

Michael Sehestedt stated the decision did not have to be made at a Public Meeting. The Commissioners could continue it to any other meeting time.

Chair Kennedy stated as soon as the matter was cleared, it would be scheduled for a time convenient to all parties involved, perhaps earlier than November 24, 1999.

Michael Sehestedt asked anyone else in the audience who was interested in this particular issue to please provide a name and phone number so they could be contacted as to the exact date and time for the decision.

Horace Brown requested an easement be saved for a walkway adjacent to the road. If there is not enough right-of-way on the state highway, that an easement be saved in this right-of-way so a walkway could be built on that side of the road at some time in the future.

Chair Kennedy thanked Horace Brown for that suggestion.

Hearing: Petition to Vacate a Portion of Raser Drive (off Grant Creek Road)

This is a petition to abandon "A portion of Raser Drive from Reserve Street to Old Grant Creek Road located in Section 8, Township 13 North, Range 19 West in Missoula County, Montana."

The reasons for the request are as follows:

1. This is an unimproved, dead-end road.
2. There are public health and safety issues due to the railroad tracks.
3. There are safety and security issues.

The following landowners have been notified: Missoula County, 200 West Broadway, Missoula, MT 59802 and Montana Rail Link, 101 International Way, Missoula, MT 59802.

John Crowley, Montana Rail Link, stated that Nick Kaufman was going to do this presentation but had not arrived. MRL has requested a vacation of a portion of Raser Drive that extends westerly and dead-ends into the Reserve Street overpass. This is a portion of Raser Drive that parallels the right-of-way for Montana Rail Link and bisects a piece of property they bought several years ago from Missoula Livestock Auction Company. It is immediately south of the approximate 22-acre Former County Shop property. The reason for this vacation request is that MRL has been approached by two industries that are both rail shippers who have asked for a "build to suit" proposal. This site has been looked at as a possibility. If a rail-oriented business were constructed on the 7 acres they own and extend railroad tracks into it, they would either have to obtain an easement from the County to cross over the 60-foot right-of-way or have to somehow vacate the street. The street is not serving any useful purpose at this time, and to facilitate any future activity of extending a rail line, they were present today to ask for a vacation of that right-of-way. Horace Brown has mentioned that the County would like to maintain some kind of public easement through on this property and it was agreed that MRL would share a 60 foot access easement along their northerly boundary, which would be the County's southerly boundary, 30 feet on MRL land and 30 feet on County land. They are agreeable to that solution.

Commissioner Evans stated that when a road is vacated, generally the adjoining owners on either side get property to the middle of the road. Is that what Mr. Crowley is anticipating?

John Crowley stated MRL is the adjoining property owner on both side of Raser Drive.

Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Chair Kennedy stated the next step in the process for a vacation hearing involved a site inspection by one Commissioner and County Surveyor Horace Brown. That inspection will be scheduled and a report will be made back to the Board. The decision on this action will then be made at the next scheduled Public Meeting, which is November 24, 1999.

Hearing: Petition to Abandon a Portion of Lower Miller Creek Road

This is a petition to abandon "Lower Miller Creek Road through the NE 1/4 of Section 14, Township 12 North, Range 20 West in Missoula County, Montana."

The reasons for the request are as follows:

1. It is necessary and advantageous to abandon this County road in order to dedicate a new right-of-way for the purpose of providing a safer public roadway, free of blind curves and segment of short sight distance.

The following landowners have been notified: Maloney Properties LLC, c/o Artie Dorris, 5055 Jordan Court, Missoula, MT 59803.

Tom McCarthy, WGM Group, representing Maloney Ranch, stated this involves the road in the Miller Creek Valley, just west of the existing Montana Power Substation. Horace Brown viewed the site recently when he was in the area on a different matter. Maloney Ranch has a 175-acre tract just on the south side of this section of road and they were looking at an approach permit. Horace Brown pointed out at that time that there were some blind curves and bad grade problems in that section of road. It had been on the Road Department's CIP for some time to fix the problems. Horace Brown suggested realigning that piece of road. It seemed like a good idea and was presented to the client. After driving the road, the blind curves were evident. That precipitated this request, it is not really a vacation, but a realignment to straighten that section of road and flatten some of the vertical curves. It was explained by Colleen Dowdall and Horace Brown that the vacation process needed to be used to accomplish the realignment. It is a fairly dangerous section of road with those blind curves. This petition covers two curves in this section of road, approximately one-half mile. An irrigation ditch would be relocated and new culverts would be installed where necessary.

Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Chair Kennedy stated the next step in the process for a vacation hearing involved a site inspection by one Commissioner and County Surveyor Horace Brown. That inspection will be scheduled and a report will be made back to the Board. The decision on this action will then be made at the next scheduled Public Meeting, which is November 24, 1999.

Consideration: Samanda Subdivision for Lease/Rent (Conifer Drive) – Sixmile Area

Tim Hall, Office of Planning and Grants, presented the staff report.

This is a request by the applicants, Stephen J. and Grace Marie Hutchings, to place a second dwelling on a 10-acre parcel located on Conifer Drive, accessed off the lower end of Ninemile Road. One dwelling unit currently exists on the parcel. Each dwelling unit will be served by an individual well and individual septic system.

The property is unzoned and is governed by the 1975 Missoula County Comprehensive Plan, which designate that area as Rural Low Density Residential land use with a recommendation of one dwelling unit per 10 acres. The applicants use their property for residential purposes. Land uses in the vicinity of this property are on lots generally varying from 5 acres to 40 acres.

The recommendation of the Planning Staff is for approval of the subdivision for lease or rent based on the findings of fact and subject to the conditions outlined in the staff report. The approval of the variance request for Conifer Drive to vary from a 24-foot road width to the existing condition 22-foot road width is also recommended. Mr. Hutchings has no objections to the conditions as submitted.

Conditions include RSID waivers for sewer, water, transportation and pedestrian improvements if they every make their way up Conifer Drive, as well as compliance with Frenchtown Rural Fire recommendations for wildland standards and the \$100 contribution to the Frenchtown Rural Fire District hose fund. The proposal as submitted doesn't impact agricultural use or conservation resources on the land. It does not disrupt the rural atmosphere that exists in the vicinity.

The proposed lease or rent is adequately buffered from adjacent property owners and their surrounding open lands. The Hutchings have done their best to cluster the homesites. Staff agrees that this mitigates any potential disturbance to the area and as such bring the project into substantial compliance with the County Comprehensive Plan. Staff supports approval of this subdivision for lease or rent.

After Board action today, Mr. Hutchings would have to adhere to Health Department regulations ongoing and provide evidence to the Planning Staff that all the elements of his plan have been submitted.

Steve Hutchings stated there are nine people living in the current dwelling on his property, not eight as stated in his application. He felt this was a reasonable request and has followed proper procedures in applying for this subdivision for lease or rent.

Chair Kennedy asked for public comment.

Randy Batt stated he lived close to Mr. Hutchings. He was curious about this process when the new house is already in place. He was concerned that an inspector for the City should know the rules.

Colleen Dowdall stated the requirement is that a party go through the subdivision for lease or rent process before the additional dwelling is allowed to be hooked up to a septic system and occupied. Mr. Hutchings has been involved with this process for some time, it is a lengthy process. Sometimes the review timeline does not coincide with the delivery of the dwelling or the coming of winter. There is nothing illegal or beyond the law for him to have the additional structure on site. What he could not do was occupy the structure or hook it to the septic system until he received this approval.

Randy Batt stated that clustering was also mentioned. He thought that property was to be divided in no less than 5 acres, was that correct?

Tim Hall stated the land use in this area is one dwelling unit per 10 acres. The overall density on this property, with the two dwellings, would be one dwelling unit per 5 acres, if measured in gross calculation. Actually, the two dwellings are on the eastern end of the property, with the remaining land as open horse pasture. It did not equally place one home on five acres, they are relatively close together. That meets the general criteria for clustering as staff sees it. There are some small acreage's adjacent to this parcel. There is a 2.8 acre parcel immediately to the south of Mr. Hutchings, and others varying in size from roughly 4 acres to larger 10 acre tracts. There is a little bit of everything in the vicinity and Planning Staff felt Mr. Hutchings was attempting to preserve more open space than some of the smaller tracts currently allow.

Randy Batt stated he had no objection to Mr. Hutchings adding a second household to his property, he had the right to do that and he felt government shouldn't get involved unless what was planned would impact the lifestyle and livelihood of many others. His main concern was that this wouldn't turn into some kind of trailer park. This particular area has limited water and allowing too many more houses would seriously affect water quantity and quality for all the residents. He would like to be assured that this only added one additional dwelling on this 10 acres.

Commissioner Evans stated that Mr. Hutchings had asked for no favors whatsoever. The fact that he is the City Building Inspector has not influenced anything and he has been scrupulously verbal about that.

Chair Kennedy stated that as this was a subdivision for lease or rent, there was no division of property. He asked Colleen Dowdall what precludes additional requests for units on that same parcel?

Colleen Dowdall stated Mr. Hutchings would have to come in and ask for additional units. With more than two mobile homes, Mr. Hutchings would have to be licensed as a mobile home park which requires additional licensing through the Health Department. Nothing more can be put on the parcel without review by the Commissioners or the Health Department.

Chair Kennedy stated in addition, there were Comprehensive Plan compliance issues that would need to be dealt with. Should that occur in the future and Mr. Hutchings decides he wants to do something different with the property, he must return and go through another process. There has to be subdivision regulation compliance and there has to be an additional compliance with mobile home park requirements. There is nothing like that in this proposal and it is only for that additional dwelling. It is not a split of property, it is not subdivision.

Randy Batt asked why it is listed as subdivision?

Chair Kennedy stated the property is not being split into separate parcels.

Commissioner Carey stated that if the Board were to approve this action, it would not in any way make further subdivisions more likely. This did not set in motion any future development.

Colleen Dowdall stated that each subdivision to come before the Board must be reviewed on its own merit. This subdivision increases the density to the extent that it maxes out the density for this parcel as recommended by the Comprehensive Plan. It isn't likely that anything else could be approved on this parcel, but each request must be looked at on its own merit.

Michael Sehestedt stated that Comprehensive Plan density is maxed out. The Comprehensive Plan is the first item that gets looked at when a request for subdivision comes in. If Mr. Hutchings made an additional request, he would be told his chances are slim, however, any citizen has the right to take the request all the way through the administrative process, up

to the Board of County Commissioners, where the request may be denied. There is no absolute guarantee this property won't be divided again, but it is highly unlikely.

Commissioner Evans stated that if that happened, public notice would occur as it has with this request. Mr. Batt would have advance notice and could make his protest heard.

Randy Batt asked if he wanted to do something like this on his property, would the permit time take longer than the actual meeting with the Commissioners? In essence, that is all today's meeting was.

Commissioner Evans stated the permit process took a considerable amount of time, perhaps up to six months.

Chair Kennedy stated that today's meeting was the culmination of a process that began a long time ago when the owner came to the Office of Planning and Grants to discuss the project. There was a long process of discussion and negotiation before staff was prepared to make a recommendation to the Board. What Mr. Batt saw today, was the very "tip of the iceberg," the very end of this lengthy process. If Mr. Batt wanted to do this same thing on his property, most of the discussions would take place between him and staff, until a recommendation was made to the Board for action.

Commissioner Evans stated she believed Mr. Hutchings process has been ongoing for at least six months.

Randy Batt stated he had no reason to object to this request. If there were a reason to object, after someone had well through six months worth of bureaucratic stuff and the Commissioners denied the project, had all that work been for nothing?

Colleen Dowdall stated if a subdivision is turned down there was an appeal process to the District Court to ask them to overturn the decision of the Board of County Commissioners. It is a full review process for anyone who applies for a subdivision.

Commissioner Evans stated the Planning Office could tell of numerous subdivision that have been submitted to both the City and the County that have been denied at the final approval stage.

Steve Hutchings stated for the record that the reason he went through the full subdivision review process is because he is a City official and he felt he had to be held to a higher standard than everybody else. He did not want to read about himself in the Missoulian. He felt it was important for a government official to set the bar a little higher. It has been a long and arduous process and very trying at times. He could have used the Family Transfer process but he felt he had to show the public that he was willing to not only enforce the rules but also abide by the rules. He has obtained every permit and inspection that is required through the County and State. He has not occupied the building in any way prior to this final approval.

Chair Kennedy stated that Mr. Hutchings had a process available to him as he mentioned, which is also available to Mr. Batt, of the Family Transfer. He could have avoided going through the subdivision review process by simply transferring the land to a member of his family. The Board feels this is not a good law, but that is the way that law is written. Mr. Hutchings elected instead to go through the review process for the reasons he stated.

There being no further comments, the public comment section was closed.

Commissioner Evans moved that the Board of County Commissioners approved the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations for Conifer Drive to vary from a 24 foot road width to a 22 foot road width based on the findings of fact in the staff report; and to approve Samanda Subdivision for Lease or Rent, based on the findings of fact and subject to the conditions in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Samanda Subdivision for Lease or Rent Conditions of Approval:

1. The lot owner shall file a document of record prior to final plan filing waiving the right to protest participation in a future RSID/SID for public sewer and water systems and transportation and pedestrian improvements to Conifer Drive based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land depicted herein. *Subdivision Regulations Article 3-7(2) and staff recommendation.*
2. The developer shall contribute a \$100.00 water fee to the Frenchtown Rural Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants prior to plan filing. *Fire District recommendation.*
3. The Frenchtown Rural Fire District shall approve provision of water for firefighting purposes prior to plan filing. *Subdivision Regulations Article 3-7(1).*
4. A development covenant shall be filed, subject to OPG, fire district and County Attorney approval, to include the following items related to providing fire department access, minimizing potential wildlife conflicts and addressing wildland/residential interface standards:

Fire mitigation:

- A. Turnaround for fire apparatus shall be provided for the new home site, as shown on the site plan. *Missoula County Subdivision Regulations Article 3-2(6)(E) and staff recommendation.*
- B. The driveway driving surface to the existing and proposed home site shall be a minimum of 12 feet in width with a minimum unobstructed width of 20 feet wide and 13 feet 6 inches high. *Missoula County Subdivision Regulations Article 3-2(3)(C), Fire District and staff recommendation.*

C. The property owner shall create a defensible space for fire protection purposes as approved by the appropriate fire jurisdiction. Vegetation shall be removed and reduced around each building according to the slope. Single ornamental trees or shrubs need not be removed as long as all vegetation near them is reduced according to the guidelines established by the fire jurisdiction. Ornamental trees and shrubs should not touch any buildings. When planting the property owner shall select trees, shrubs, and vegetation from native vegetation stock when possible that limit or retard fire spread as suggested below:

- i. Perennial: Choose hardy perennial flowers that are adapted to the climate of the area. These green, leafy, succulent plants are difficult to burn. Watering and regular weeding improves fire resistance.
- ii. Shrubs: Evergreen shrubs such as dwarf conifers or junipers tend to ignite easily; avoid them unless well spaced.
- iii. Trees: Deciduous trees can be clumped, scattered or planted in greenbelts or windbreak patterns. Evergreen trees tend to ignite easily and should be spaced accordingly.

See Missoula County Subdivision Regulations vegetation reduction guidelines and use applicable slope for required standards. *Missoula County Subdivision Regulations Article 5-1(5)(H), Missoula County Subdivision Regulations Appendix VII, Fire District and staff recommendation.*

D. Only Class A or B fire-rated roofing materials shall be used for any new construction. *Missoula County Subdivision Regulations Article 5-1(5)(H) and staff recommendation.*

Bid Award: Video Arraignment (Sheriff's Department)

Chair Kennedy stated this item had been suspended until a representative from the Sheriff's Department was present. Sheriff Doug Chase was now present. He asked Sheriff Chase if he had an understanding of the additional three year warranty in the bid, did that mean there would be, in effect, four years of warranty or three years of warranty?

Sheriff Doug Chase stated he did not have the answer to that question.

Chair Kennedy asked if there was an urgency for action on this item today?

Sheriff Doug Chase stated the urgency was to get the process moving along because it will probably be into next year if it is delayed much longer. They hoped to get this video arraignment system in place and operational by January 1, 2000.

Commissioner Evans asked if this had to be done at a public meeting or could it be decided at an administrative meeting of the Commissioners? She asked Sheriff Chase to find the answer to the question and the Board would take action later this afternoon.

Colleen Dowdall stated her interpretation of the bid would be for four years total of warranty.

Chair Kennedy stated that was his reading as well but he wanted it to be clear and also if the warranty was something the County really wanted and needed. He asked Sheriff Chase to check on both those issues.

Sheriff Doug Chase said he would check on those questions immediately following the meeting.

Chair Kennedy stated the item would be continued until the questions were answered.

There being no further business to come before the Board, the Commissioners were in recess at 2:05 p.m.

Immediately following the Public Meeting, Captain Mike O'Hara clarified that the additional warranty on the video arraignment equipment was something that the County did indeed want and need and it was for three years in addition to the one year included with the purchase of the equipment, for a total of four years of warranty. Commissioner Evans moved that the Board of County Commissioners approve the award of the bid for video arraignment equipment to US West in the amount of \$82,497.89 with three additional years of warranty at \$16,974.69. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

THURSDAY, NOVEMBER 11, 1999

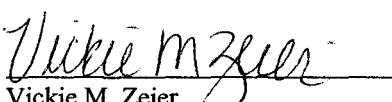
The Courthouse was closed for the Veterans Day holiday.

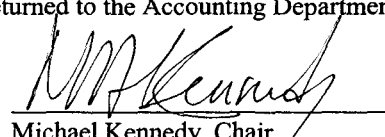
Chair Kennedy spoke at the Veterans Day Ceremony held on the Courthouse lawn in the forenoon.

FRIDAY, NOVEMBER 12, 1999

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

Claims List -- Commissioners Evans and Kennedy signed the Claims List, dated November 10, 1999, batch number 308, with a grand total of \$14,452.99. The Claims List was returned to the Accounting Department.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, NOVEMBER 15, 1999

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

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Missoula Water Works as principal for Warrant #350461 issued July 21, 1999 in the amount of \$43.02, Warrant #352293 issued August 30, 1999 in the amount of \$260.90 and Warrant #354667 issued October 18, 1999 in the amount of \$88.91, all on the Missoula County Road Fund, now unable to be found.

ADMINISTRATIVE MEETING

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

Extension Requests -- The Commissioners approved and signed three Extension Requests:

- 1) A request for a six-month extension of the final plat approval for Deschamps Lane Subdivision #2 (with a letter to Ron Ewart of Eli & Associates). The new filing deadline is May 19, 2000.
- 2) A twelve-month extension of the final plat for Starburg Addition Summary Subdivision (with a letter to Ken Jenkins of Professional Consultants, Inc.). The new filing date is December 9, 2000.
- 3) A one-year extension for the installation of public improvements for Missoula Development Park, Phase 1 (with a letter to Barbara Martens of Missoula Development Authority). The new filing deadline is November 17, 2000.

Counter Offer -- The Commissioners signed a Counter Offer for the purchase of Lot 4, Block 2 in the Missoula Development Park by Donald Snavelly in the amount of \$112,000.00.

Memorandum of Agreement -- The Commissioners signed a Memorandum of Agreement with the Seeley Lake Community Council for up to \$1,750.00 to provide local government liaison services, advancing and promoting the interests and welfare of Seeley Lake area residents. The term of the Agreement is July 1, 1999 through June 30, 2000.

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

TUESDAY, NOVEMBER 16, 1999

The Board of County Commissioners did not meet in regular session. The Commissioners left for San Diego, CA to attend a "Smart Growth Conference" being held there by the Urban Land Institute from November 17, 1999 through November 19, 1999.

WEDNESDAY, NOVEMBER 17, 1999

The Board of County Commissioners did not meet in regular session. The Commissioners were all attending the "Smart Growth Conference" in San Diego, CA.

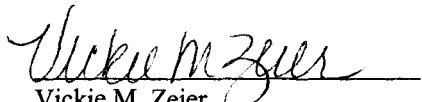
PUBLIC MEETING -- Canceled.

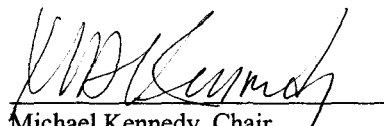
THURSDAY, NOVEMBER 18, 1999

The Board of County Commissioners did not meet in regular session. The Commissioners were all attending the "Smart Growth Conference" in San Diego, CA.

FRIDAY, NOVEMBER 19, 1999

The Board of County Commissioners did not meet in regular session. The Commissioners were all attending the "Smart Growth Conference" in San Diego, CA.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, NOVEMBER 22, 1999

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

Site Inspection -- In the afternoon, Commissioners Carey and Evans accompanied County Surveyor, Horace Brown, on site inspections for the request to vacate a portion of Raser Drive and the request to abandon a portion of Lower Miller Creek Road.

Claims List -- Commissioners Carey and Evans signed three Claims Lists:

1. Dated November 16, 1999, batch numbers 313, 314 and 320, with a grand total of \$46,000.23.
 2. Dated November 16, 1999, batch number 322, with a grand total of \$47,551.76
 3. Dated November 19, 1999, batch numbers 323, 324, 325, 327, 328 and 329, with a grand total of \$263,475.86.
- The Claims Lists were returned to the Accounting Department.

Resolutions – The Commissioners signed three Resolutions:

1. Resolution No. 99-085 for the purpose of endorsing the Missoula Area Economic Development Corp. as the Certified Community lead organization for Missoula County, and authorizing it to complete recertification requirements on behalf of the community.
2. Resolution No. 99-086 for the purpose of abandoning the Alley in Block 12 of Eddy Addition, located in Section 21, Township 13 N, Range 19 W, PMM, Missoula, Montana, Missoula County.
3. Resolution No. 99-087 for the purpose of accepting from AnnaMarie Bench Bosley, Personal representative of the estate of Millie Kathryn Hill an easement reservation for public road and all other public purposes, located in a portion of the NE ¼ of Section 26, Township 21 N, Range 17 W, PMM, Missoula, Montana, Missoula County.

Mileage Certification Form – The Commissioners signed a Mileage Certification Form from the Data and Statistics Bureau of the Montana Department of Transportation certifying that the rural road mileage in Missoula County amounts to 1,581.228 miles. The form was returned to the Surveyor's Office for further handling.

Certification of Acceptance – Chairman Evans signed three Certifications of Acceptance for County Maintenance to certify the following subdivision streets as County maintained:

1. Brandon Way; the end of Southpointe Phase II, westerly 915.51 feet to the property line Linda Vista Eight Supplement Phase 2.
2. Brandon Way; the end of Linda Vista Seventh Supplement Phase 5, easterly 535.71 feet to the intersection with Justin Court, easterly 374.38 feet to the intersection with the property line of Southpointe Phase III, 38 foot of asphalt, curb and gutter and 4 foot sidewalk both sides within a 60 foot of right of way.
2. Justin Court; the intersection with Brandon Way, northerly 685.54 feet to the center of a 50 foot radius cull-de-sac, 34 foot of asphalt, curb and gutter, 5-foot sidewalk both sides within a 54 foot right of way.

The documents were returned to the Surveyor's office for further handling.

TUESDAY, NOVEMBER 23, 1999

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

Payroll Transmittal – The Commissioners signed a Payroll Transmittal for Pay Period 22, with a total Missoula County payroll of \$701,702.34. The document was returned to the Auditor's office.

ADMINISTRATIVE MEETING

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

Service Contract – The Commissioners signed a Service Contract with the University of Montana to study air quality over a one-year period of time, November 1, 1999 through November 1, 2001. The project is funded by Stone Container due to a settlement of lawsuit between Stone/EPA/CHEER. Compensation shall be \$131,000.00.

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with Turning Point, using funds received from the Office of Juvenile Justice, for the purpose of employing two Youth Development Coordinators for Hellgate High School and Rattlesnake Middle School as part of the Flagship Project. The term is October 1, 1999 through September 30, 2000. The total cost is \$48,877.16.

Request for Action – The Commissioners signed a Request for Action with USF Reddaway to move the utility easement between Lots 2 and 3, Block 4, to a location within the roadway easements of Expressway, Kestrel Drive and Tanager Way in the Missoula Development Park. The document was returned to Barbara Martens in the Projects office.

Extension Request – The Commissioners signed an Extension Request for a six-month extension of the final plat approval deadline for Intoto Farm Summary Subdivision (with a letter to Ron Ewart of Eli & Associates). The new filing deadline is May 19, 2000.

Agreement – The Commissioners signed a Health Department Labor Agreement with the Local Unit Number One of the Montana Public Employees Association, Inc. for the purpose of defining the wages, hours and other working conditions of the employees of the County of Missoula who are represented by the Montana Public Employees Association, Inc. The term is July 1, 1999 through June 30, 2001. Attached is an addendum "Compensation Schedule" for the period July 11, 1999 through June 30, 2000.

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

WEDNESDAY, NOVEMBER 24, 1999

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

Claims List -- Commissioners Carey and Evans signed the Claims List, dated November 23, 1999, batch numbers 332, 333, 336, 321, 331, 334, 335, 341, 342 and 343, with a grand total of \$157,568.97. The Claims List was returned to the Accounting Department.

Plat – The Commissioners signed the plat for Sweet Water Hills, a subdivision of Missoula County located in the W ½ of Section 15, T13N, R20W, PMM, a total area of 98.49 acres, with the owners being Orville L. Daniels and Olleke E. Rappe-Daniels; John M. and Sharon L. Hughes; George W. and Nora Leighton; and John P. and John C. Fisher.

Purchase Agreement – The Commissioners signed a Purchase Agreement with A & C Drug, regarding the purchase of prescription drugs for the Missoula County Detention Facility. The term is November 1999, with the opening of the Detention Facility, to July 1, 2000.

Other items included:

The Commissioners met with representatives of the Fair Board; Dick Mangan, Sam Yewusiak and Bill Nooney, as well as Susan Reed, County Auditor, regarding funding for repair of water problems at the Fair.

PUBLIC MEETING – November 24, 1999

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Bill Carey. Also present were Commissioner Barbara Evans, Clerk & Recorder/Treasurer Vickie Zeier, Chief Civil Attorney Michael Sehestedt and Deputy County Attorney Colleen Dowdall. Mike Moderie, Project Engineer, Surveyors Office, and Chuck Wright, Land Surveyor, Surveyors Office, attended the meeting for Surveyor Horace Brown who was on vacation. Commissioner Michael Kennedy was on vacation.

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$474,596.82. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Bid Award: Construction of Jail Garage Building (Jail)

The garage was originally in the building program as an alternate. Due to the high cost, it was deferred. A new design was developed that would reduce the cost \$25,000 to \$30,000. This was presented to the County Commissioners and approved to proceed. The construction has begun due to weather issues. The bid came in as predicted.

It is the recommendation of the Sheriff's Department to award this bid and approve the contract with Dennis Lower Construction in the amount of \$43,421.00.

Michael Sehestedt stated this was included as an alternate in the original contract for construction of the new detention center. It was deleted due to cost. The garage has been redesigned, bids were solicited and the recommendation is to award the contract to the low bidder. It is necessary to have the building at the detention center site to maintain equipment and contain riot gear for emergency purposes.

Acting Chair Carey asked for public comment. There was none.

Commissioner Evans moved that the Board of County Commissioners approve the award of the bid and contract for construction of the Jail Garage Building to Dennis Lower Construction Inc., in the amount of \$43,421.00 as recommended. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Decision: Petition to Vacate a Portion of Raser Drive

This is a petition to abandon "A portion of Raser Drive from Reserve Street to Old Grant Creek Road located in Section 8, Township 13 North, Range 19 West in Missoula County, Montana."

The reasons for the request are as follows:

1. This is an unimproved, dead-end road.
2. There are public health and safety issues due to the railroad tracks.
3. There are safety and security issues.

The following landowners have been notified: Missoula County, 200 West Broadway, Missoula, MT 59802 and Montana Rail Link, 101 International Way, Missoula, MT 59802.

The public hearing on this matter was held on Wednesday, November 10, 1999. A site inspection was conducted by Commissioner Bill Carey and County Surveyor Horace Brown on Monday, November 22, 1999.

Michael Sehestedt stated the portion of Raser Drive at issue is on property next to the old "County Shops" land. Montana Rail Link owns the property on both sides of the portion of Raser Drive to be abandoned. During the time the County used this area as the County Shop site, Raser Drive was blocked with a fence at the property boundary. Washington Corporation would like to get their property in a condition that would be conducive to a rail related business if one wanted to build on that site. They do not have any current prospects. He recommended an easement be obtained along the boundary between Montana Rail Link and the County, for public or private road purposes, so that if this property were later developed access to the rear portion would be available.

Acting Chair Carey asked for public comment. There was none.

Commissioner Evans read a memorandum from County Surveyor Horace Brown: "According to law, I have inspected the required vacation on Raser Drive with one Commissioner. I have discussed the issue with a County attorney, and have determined there is no problem with vacating that piece of property. I am willing to accept an easement for a future road, if needed, consisting of 35 feet on the Washington Corporation side and 25 feet on the Missoula County

side. If the Commissioners determine that a 30 foot split is satisfactory, I can also accept that." She asked Nick Kaufman if that was acceptable to his client.

Nick Kaufman stated the 35/25 split was acceptable to his client.

Commissioner Evans moved that the Board of County Commissioners approve the petition to abandon a portion of Raser Drive from Reserve Street to Old Grant Creek Road located in Section 8, Township 13 North, Range 19 West, in Missoula County, Montana, contingent upon the dedication of a public or private easement for a future road consisting of 35 feet on the Washington Corporation side and 25 feet on the Missoula County side. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Decision: Petition to Abandon Clearwater Shortline Railroad right-of-way on Highway 12 West – Postponed from November 10, 1999

This is a petition to abandon "The Clearwater Shortline Railroad right-of-way from the Northwest corner of Tract 1 of Certificate of Survey 2842 located in Section 26, Township 12 North, Range 22 West to the Southeast corner of the north 1/2 of the northeast 1/4 of Section 35, Township 12 North, Range 22 West, along the Lewis and Clark Highway 12 West located in Missoula County, Montana."

The reasons for the request are as follows:

1. The right-of-way described is not necessary or useful for right-of-way purposes.
2. The right-of-way constitutes a cloud on the title of the property involved.

The public hearing on this matter was held on Wednesday, October 27, 1999. A site inspection was conducted by Commissioner Michael Kennedy and County Surveyor Horace Brown on Tuesday, November 2, 1999.

Acting Chair Carey asked for public comment.

Michael Sehestedt stated one of the reasons for delay on this petition was that Peter Dayton had been retained by a title company to do some extensive title research on this request. In 1909-1910, the Clearwater Railroad set out to build a railroad from Lolo to the Clearwater. They acquired various pieces of right-of-way under various states of title, about 20 miles up Lolo Creek, before they went out of business. The remnant assets were transferred to the Northern Pacific, who operated a logging railroad at least part way up the creek for some period of years. They subsequently abandoned it and in 1930, quitclaimed all of their right, title and interest in the Clearwater Shortline Railroad to Missoula County. The County has various pieces of right-of-way running up the canyon. This was discovered by the petitioner, Mr. Hale, in the course of attempting to sell his property. It has become a major issue. A key question is what is the nature of the County's interest in that property. In his opinion, and in Mr. Dayton's research, this is a right-of-way interest. Part of the right-of-way was acquired by condemnation. All that was acquired by that decree of condemnation, and all that was transferred to Missoula County, was an easement for the purpose of building, operating and maintaining a railroad. Another portion of the right-of-way was a Blackfoot mining and milling parcel. The title to that land was granted subject to a reverter which provided that if it were no longer used for railroad purposes, it would revert to the grantor. No one has actually quieted title, but he believed it was fairly clear that it hasn't been used for railroad purposes. He asked Peter Dayton to provide more detail on this matter.

Peter Dayton, Worden, Thane & Haines, representing George Hale, stated he would provide a summary of the situation. The basic problem is way too many road easements crammed into the Lolo Creek Valley. Starting in the late 1800's, there were two road petitions filed running to the north of Lolo Creek. There is also the current Highway 12 right-of-way, which is a State highway. Also, in 1909-1910, the Clearwater Shortline Railroad Company acquired some right-of-way. A portion of the right-of-way to the northwest was acquired by condemnation from the Spicers and under the statutes, all that the railroad could get was an easement. The area to the southeast was acquired by the Bass Deed, and research shows the language of the deed was probably a fee interest the railroad got. There is one small portion that was acquired from the Big Blackfoot Lumber Company and Anaconda, which is only an easement and has a right of reverter. The question on all this right-of-way was what did Missoula County get? There is a statute relating to County roads (in effect in 1930) which says that "by taking or accepting land for a highway, the public acquires only the right-of-way and the incidents necessary to enjoying and maintaining the same, subject to the regulations in this act and code provided." There are no cases in Montana law which say what happens when there is a situation where the statute says the entire County gets is an easement but the deed says it is a fee interest. There is an identical statute in California and two cases that address that issue. Those cases say that the statute takes precedence over the language of the deed. It seems then that it is fairly clear that what the County owns in the whole 20 mile section is not determined by what the Clearwater line originally got, but is only an easement. This easement winds back and forth on top of the current Highway 12 easement and in some places, the creek is in the right-of-way. In the entire 20-mile section of this right-of-way, several portions have been sold by the County. A number of sections are subject to rights of reverter in deeds from Big Blackfoot Lumber Company and Anaconda. This railroad right-of-way is of no use to the County, it duplicates or is adjacent to the current Highway 12 right-of-way, which is what provides access. On Mr. Hale's property, this right-of-way does not provide access to any public or private land. The abandonment gets rid of one of four County road rights-of-way that are crunched together in the Lolo Creek Valley.

Commissioner Evans thanked Peter Dayton for his extensive research on this matter. She also apologized to Mr. Hale for the time required to reach a decision on this matter.

There were no further public comments.

Commissioner Evans moved that the Board of County Commissioners approve the abandonment of the Clearwater Shortline Railroad right-of-way from the northwest corner of Tract 1 of Certificate of Survey 2842 located in Section 26, Township 12 North, Range 22 West, to the southeast corner of the north 1/2 of the northeast 1/4 of Section 35, Township 12 North, Range 22 West, along the Lewis and Clark Highway 12 West (which Clearwater obtained under documents recorded in Book 1 of Orders and Decrees, Page 636, Book 49 of Deeds, Page 335, Book 57 of Deeds, Page 117, and



Book 57 of Deeds, Page 246, which Clearwater transferred to Northern Pacific Railway Company by a document recorded in Book 77 of Deeds, page 581, and which Northern Pacific transferred to Missoula County under a quitclaim deed recorded in Book 111 of Deeds, Page 370), located in Missoula County, Montana, excluding from the vacation those portions of the right-of-way within the right-of-way lines of Highway 12 as the same is currently constructed and shown. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Decision: Petition to Abandon a Portion of Lower Miller Creek Road

This is a petition to abandon "Lower Miller Creek Road through the NE 1/4 of Section 14, Township 12 North, Range 20 West in Missoula County, Montana."

The reasons for the request are as follows:

1. It is necessary and advantageous to abandon this County road in order to dedicate a new right-of-way for the purpose of providing a safer public roadway, free of blind curves and segments of short sight distance.

The following landowners have been notified: Maloney Properties LLC, c/o Artie Dorris, 5055 Jordan Court, Missoula, MT 59803.

The public hearing on this matter was held on Wednesday, November 10, 1999. A site inspection was conducted by Commissioner Bill Carey and County Surveyor Horace Brown on Monday, November 22, 1999.

Acting Chair Carey asked for public comment.

Tom McCarthy, WGM Group, stated there were two curves in that portion of Miller Creek Road. While on site earlier this summer with Horace Brown, he mentioned that section of Lower Miller Creek Road, through the northeast quarter of Section 14, had been on the Surveyors Office agenda to have those blind curves removed and regraded. Horace Brown asked him to bring the matter to the attention of his client for providing an alternate right-of-way to accomplish the fix. After discussion, the client agreed which has resulted in the filing of this petition. The petition is not really a vacation, it is a realignment. He recommended the Commissioners accept the new right-of-way alignment and the abandonment of the old alignment be conditioned upon the completion of the reconstruction of the roadway within the new alignment. He did not want to have the old road go away before the new one is in place. These two actions need to be in sync with each other. The client had originally estimated this could be completed next summer, but the recent death of Mr. Prock may change the completion date. The new right-of-way can take place so it is there and under the County's control so utility companies and others don't make construction more difficult.

Commissioner Evans asked Tom McCarthy how the motion should be worded?

Tom McCarthy stated the motion should accept the new right-of-way for the realignment and condition the vacation of the old right-of-way upon the completion of construction of the new Lower Miller Creek Road.

Colleen Dowdall stated she was working on language. In terms of a clean record of what happens, this makes it more complicated, not just relocating the right-of-way. To create new right-of-way but keep old right and have that occur at different time's makes the matter more complicated.

Tom McCarthy stated language could be put in a Grant of right-of-way to be executed by his client, leaving a temporary easement expiring upon completion of the other road.

Colleen Dowdall stated taking away the right-of-way is what has to happen by virtue of a petition. Acceptance of right-of-way can be done by virtue of a grant. Perhaps the Commissioners could act on the petition to vacate and have it conditioned upon the landowner granting the County right-of-way.

Chuck Wright stated he did not want to confuse the matter, but the next item on the agenda was exactly the same thing, a petition to alter a particular road for safety reasons, altering out the curves to straighten the road. That is exactly what is being done here, a petition to alter a road. The law covers creation, alteration and vacation in the same legal entity.

There were no further public comments.

Commissioner Evans moved that the Board of County Commissioners approve the relocation or alteration of Lower Miller Creek Road through the northeast 1/4 of Section 14, Township 12 North, Range 20 West, in Missoula County, Montana, under the condition that the old right-of-way is kept contingent upon the construction of the roadway within the new alignment. The new right-of-way does not become effective until the new road is built. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Hearing: Steiner Family Transfer

This is a consideration of a request to create a family transfer parcel for that parcel described as COS 4038.

Chris T. Steiner has submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately forty acres in size located in Hayes Creek off of an existing access road. Mr. Steiner proposes to create a twenty-acre parcel dividing the current parcel in half, for transfer to his son, Brad C. Steiner.

Mr. Steiner is not the owner of record of the property at this time. He has made an offer on the property but does not want to complete the purchase until he knows that he can split the property and give part of it to his son.

The history of the parcel is as follows: Certificate of Survey 4038 created this 40.276-acre parcel by use of the retracement of an existing parcel exemption. It adjoins property that was divided by Certificate of Survey, mostly in 20-acre parcels.

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

Acting Chair Carey stated he was not familiar with the term "retracement" and asked what it meant.

Colleen Dowdall stated it means that the parcel existed and the only survey of record retraced an existing parcel. She researched back to the 1970's to find where the 40 acres originated and was not able to find another survey or reference to a deed. Parcels created prior to the 1973 Subdivision and Platting Act could have been done by deed.

Greg Martinsen stated the parcel was created by a deed many, many years ago and the survey he did merely retraced the boundaries to place them on record.

Acting Chair Carey opened the public hearing.

Chris Steiner was present and came forward to answer any questions the Commissioners might have.

Acting Chair Carey asked Mr. Steiner if he had any plans other than building a house for himself and his son?

Chris Steiner stated that when he dies, his son will get all the land. He planned this to be his "last spot."

Commissioner Evans explained that under the law on Certificates of Survey, the Commissioners have to determine whether or not the applicant is attempting to evade the subdivision law. If the applicant is making an honest gift to a family member, there is no legal right to deny the transfer.

Chris Steiner stated he was doing just that, he loved his son very much and it would allow his granddaughter to be close as well.

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

Commissioner Evans moved that the Board of County Commissioners approve the request by Chris T. Steiner to create a new parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Hearing: Petition to Alter a Portion of Blue Mountain Road

This is a petition to abandon "A portion of Blue Mountain Road from the west boundary of the Knapp property (Tract A of Certificate of Survey 2621) to the west boundary of the Orendain property (Tract B of Certificate of Survey 2621), located in Section 34, Township 13 North, Range 20 West, Missoula County, Montana."

The reasons for the request are as follows:

1. Safety reasons.

The following landowners have been notified: George Knapp, 2445 Blue Mountain Road, Missoula, MT 59804; Helen Hayes Orendain, Andrea D. Orendain, 2555 Blue Mountain Road, Missoula, MT 59804.

Chuck Wright stated this petition is similar to the previous one today for Lower Miller Creek Road. The road is being straightened for safety reasons. The right-of-way is being altered from the old location to the new location and the road has already been built and paved. The adjacent landowners agreed to this. Once the petition is approved to have the right-of-way transferred to the new location, a retracement Certificate of Survey will be completed to reflect the new right-of-way.

Acting Chair Carey opened the public hearing. There being no comments, the public hearing was closed.

Acting Chair Carey stated the process for this procedure involved a site inspection with one County Commissioner and County Surveyor Horace Brown, who will then provide a report to the Commissioners. That inspection will be scheduled. This matter will be continued and a decision will be made at the next Public Meeting on Wednesday, December 1, 1999.

Hearing: Zoning Request – Portion of Maloney Ranch (Unzoned to C-A1)

Allison Handler, Office of Planning and Grants: This is a request to zone a 1,256-acre parcel of land in Lower Miller Creek. It is currently a portion of the Maloney Ranch known as the "Big Hill," its common name. The property is currently unzoned. It's located south of the part of Maloney that's zoned C-A3 and it's west of the Miller Creek Sensitive Lands area. The westerly and southerly boundaries of the proposed zoning are adjacent to the Bitterroot River and there are some parcels of land along there that Fish, Wildlife and Parks owns. The property is currently vacant. Bonneville Power Association has a power line that crosses the easterly part of the property in the utility easement and Five Valleys Land Trust currently owns, or holds, conversation easement on the steeply sloped portions of the property. In 1997, the Miller Creek Comprehensive Plan Amendment was adopted for this area. That plan designates rural, natural resource and agricultural lands on the majority of the property and Parks and Open Space for those portions of the property that are a 100-year floodplain. The plan designates the area for a residential density of one dwelling per 40 acres and the proposed zoning, which is C-A1, is consistent with that standard. C-A1 is a low-density residential district. It is designed to allow residential uses while also protecting and preserving continuing natural resources production. It encourages agriculture, it encourages natural open space land through clustering of homesites. The character of the area is agricultural and residential with large tracts of natural open space lands. By limiting development to one per 40 acres, this designation



would reduce the potential impact of development on the airshed and also limit the potential impacts to water quality. Access to the property is from Trails End Road, which is a local road that runs generally south from Lower Miller Creek Road on the eastern side of the property. Adjacent zoning to the south includes two citizen initiated zoning districts, ZD41A and ZD41B. Those districts allow residential and agricultural uses, and as I said before, to the east is the Miller Creek Land Sensitive area, and that zoning district has a specified number of designated development rights and the intention there is to preserve sensitive resources in the area. OPG (Office of Planning and Grants) did receive several letters and petitions from adjacent property owners in opposition to this request. Adjacent property owners and property owners in the general area were primarily concerned with a few of the special exception uses that were listed under C-A1 and also a few of the permitted uses, such as mobile homes and commercial feed lots. Of course, you know that special exception uses go before the County Board of Adjustment and it should just be noted that the uses allowed in C-A1 are currently also allowed on the property as it is unzoned and that C-A1 would actually result in a limiting or defining of what the exact permitted uses would be. Planning Board heard this request on November 2, 1999, and they voted 9-0 to approve. OPG recommends approval of the request, which we believe, is consistent with the goals and objectives of the adopted Comprehensive Plan for the area.

Acting Chair Carey: Okay, thank you. This is a public hearing, is they're somebody from the public that wants to comment on this?

Tom McCarthy: I'd like to do a brief presentation of the background, there's some confusion about various plans that are out there and I think I can maybe address those. They may have been adequately answered for the neighborhood in the Planning Board meeting, but if we take a moment, I think it would be helpful. Here we have two maps, one is an enlargement of the Miller Creek Comprehensive Plan. This Comprehensive Plan map is the only plan at this time for the Maloney Ranch. At the time the Comprehensive Plan process was beginning, our client had acquired the Maloney Ranch and in entering into some discussions on that property, developed a concept as to how they would like to see the Comprehensive Plan reflect their lands. This lower 1,300 acres here, this being a three mile stretch from here to here which is the area that's in question, was presented for a clustered type of development, probably some 150 units there, more like the one per five type of zoning that's over in this area and the Land Sensitive zoning. The Comprehensive Plan said no. That plan no longer exists. The Comprehensive Plan for the Miller Creek Valley, just north of there, the original 1975 Comprehensive Plan, called for two units per acre, which might have been about 1,000 homes in this valley. They had presented some 600 units here in the clustered development. The new Comprehensive Plan says one unit per five acres, it says no for that. So the only portion of the original Maloney Ranch concept that has any validity at this time is the area up in here, none of those have any validity and our client, those are no longer their plans. Their plans are to follow the Comprehensive Plan. What they've done since then is, since this is Open and Resource land and the Maloney Properties, LLC is designed to deal with urban development, a partnership was created called Hunters Ridge Investment, which took ownership of this 1,300 acres. They divided it into eight 160-acre tracts, and that's how many parcels are out there right now, plus one 21.6-acre parcel that had previously existed there, so we have 9 parcels out there on this ground. It is not the intentions of Hunters Ridge Investment to be doing any subdivision on this property here, these 160-acre tracts are not subdivisions, and they're exempt from the process. They have no intentions of entering into a subdivision process, have no intentions on their part of bringing back this planned unit development. What they're attempting to do at this point is request zoning on that particular 1,300 acres, which is the C-A1 zoning which is Open and Resource zoning. That is the zoning that is directly applicable to the desires of the Comprehensive Plan, is to make this an Open and Resource zone. They too have shared some concerns a little bit with some of the special exceptions, and it was interesting as we went through this to find out that all these special exceptions are permitted right now without any review process as Allison had just mentioned. If we do put the C-A1 zoning on here to do these special exceptions, they would have to enter into a process of making an application to use the special exception, going before the Zoning Boards of Adjustment and meeting the various criteria associated with using a special exception. I'd just point, there's eleven of them they would have to address. The location and character of natural resources and features on the property would be one of them. I'm just going to touch on a few. That the use would not adversely affect nearby properties or their occupants, so if you wanted to put one of these special exceptions up there at least you'd have to be able to address that. You'd have to submit site plans and amenity plans that have to do with the appearance and proposed use and mitigation of its impacts on adjacent properties. You'd have to address vegetation, topography and drainage. You'd have to address availability of public services and utilities. Remember, this area has been taken out of the urban service boundary. You'd have to address expressed public opinion. So many of these, as Allison has said, if we put the zoning in place, although zoning may permit some of these special exceptions, they're already allowed now but at least we put a process in place where they're going to have to be accountable if anybody ever tried to apply one of those. There were some concerns also about some of the items associated with permitted uses in there such as mobile homes and feedlots and a discussion with the County attorney, present court cases say that you cannot zone those out anyway. So, the proper way for those to be addressed is through private covenants on the properties there. Maloney Ranch has a very vested interest in this, just as the adjacent neighbors would be. They actually have three miles of frontage up against this zoning boundary. The Hunters Ridge Investment, which is comprised of some of the Maloney Ranch members there, they basically have majority control of it, they would also be interested that an undesirable use not go on one of these 160 acre tracts and devalue one of the others. And, so, that is the concepts that are there right now is to implement this plan, we've been encouraged by the Office of Planning and Grants to bring forward zoning to begin to implement the Comprehensive Plan and this is a step in that process there.

Acting Chair Carey: Thank you. Other comments? Please, step forward.

Tom McCarthy: Just a brief point, Maloney Ranch, since this is a new zoning district, is the only property with legal protest rights associated with this new district. We've tried to, throughout the planning process, to listen to what the neighborhoods want, be responsive to those kinds of issues there and this is in direct response to the Comprehensive Plan which was a response to community goals. Thank you.

Acting Chair Carey: Thank you. Any public comment? Please step forward. Any public comment? No one has anything to say about this? Okay. Well, seeing that, I'll close the hearing.

Commissioner Evans: Just for the benefit of the audience, let you know that we have toured this just recently. This is a long process in the Miller Creek area and I think we're fairly well acquainted with it. I have no problem with this and I'm going to move that we zone the "Big Hill" portion of Maloney Ranch, described as Lots 2, 3, 4, 6 and 12, and those

portions of Lots 1, 5 7 and 8 of COS #4815, lying south of the southerly boundary of the C-A3 zoning district (Resolution No. 77-88), more particularly described by a metes and bounds description shown in the attached zoning exhibit (Attachment 2), be approved, based on the findings of fact as set forth in the staff report.

Acting Chair Carey: I'll second the motion. All those in favor?

Commissioner Evans: Aye.

Acting Chair Carey: Aye. The motion passes.

Hearing: Marvin Gardens Summary Subdivision (4 lots) – Flynn Lane

Allison Handler, Office of Planning and Grants, presented the staff report.

The applicants, Bill and Lois Jones, are requesting approval to create Marvin Gardens, a 4 lot summary subdivision on 4.44 acres on the west side of Flynn Lane just north of Mullan Road. Surrounding lands are residential and agricultural. To the north is Zintek Addition; to the south is Thibault Acreage Tracts; to the east is the Flynn Ranch with continuing agricultural operations and to the west is a vacant open agricultural parcel. The Flynn Lowney Ditch runs northwest southeast across the parcel to the west of the subject property but does not cross the property. Zoning is C-RR1, which permits one dwelling per acre. The 1998 Comprehensive Plan designation is residential, two dwellings per acre. The proposal is for 4 lots of approximately one acre each with access off a cul-de-sac road called Lois Lane. There are proposed individual wells and septic systems. This is in the primary urban growth area and it is budgeted in the CIP to be sewered within the next five years. Condition 3 addresses the timing of connection to sewer when that happens. The property is also in the Airport Influence Area, but is outside the 65-decibel noise contour. Conditions 6 and 7 address general airport concerns. The site plan shows a no build zone on each of the lots to allow for the possibility of future subdivision and it shows a no build zone that extends west off the end of the cul-de-sac across Lot 4 to provide for the possibility of future connection to the west should that property develop. Condition 1 states that the no build zone across Lot 4 should be identified as a conditional public access easement. Because Lot 4 in that case would be split by an easement, a variance is requested from regulations that require that no lot be divided by an easement. Staff recommends approval of that variance request. A second variance is requested to vary from the requirement to provide pedestrian pathways. There are currently no pedestrian pathways in the area. Staff's analysis shows it is premature to require pathways and they also support that variance request. For drainage, the proposal calls for grassy swales. The County Surveyor intends to conduct a master plan runoff study for this area and he recommends the development participate in an RSID for storm drain construction. Condition 4 address drainage issues. The OPG Floodplain Administrator has said that the property is not in the floodplain. There are currently no identified hazards there that relate to high ground water as there have been in other properties further west on Mullan Road and further north on Flynn Lane. The ditch doesn't appear to be a problem either. The other conditions are standard, including the \$100 per new lot one time fee for fire emergency services, providing a plan for controlling noxious weeds and that road plans be approved by the County Surveyor. Staff recommends approval of both of the variance requests and approval of the subdivision subject to the conditions in the staff report.

Acting Chair Carey opened the public hearing.

Greg Martinsen, developer's representative, was present representing Bill Jones, who was also present. They were available to answer any questions the Commissioners may have.

Allison Handler stated she had presented a memo to the Commissioners that contains possible alternative findings of fact and conclusions of law that support the conditions, per the Planning Status meeting and subsequent discussions with the Commissioners. The memo says which findings of fact and conclusions of law are to be replaced under the "Criterion 2: Roads" section and the "Criterion 2: Sewer" section. There is also one additional conclusion of law.

Acting Chair Carey asked if the variance request with regard to the future development of a roadway also included language for a pedestrian pathway?

Allison Handler stated it did not, it was a conditional public access easement.

Acting Chair Carey stated the report said "an RSID waiver statement, including road improvements and provision of pedestrian facilities, appears on the face of the plat," and asked if that changed?

Allison Handler stated the plat still contains that. The plat identified a no build zone, but did not identify it as an easement. To have the access be possible legally, it has to be identified as an easement.

Colleen Dowdall stated the difference in the RSID waiver is in how it would be constructed, but the County needs to have a roadway easement in order to have access for vehicular use. Other amenities can be added to that, but the easement has to appear that way on the face of the plat. The opportunity for such an easement was presented by the no build zone. The new condition requires that the easement actually be dedicated, conditioned upon it not being built unless it was needed for subdivisions next door. If it was built to County standards, it's likely it would be built to whatever standards exist at the time that it is built, which would include sidewalks and walkways, etc. This subdivision has waived its right to protest that participation.

Acting Chair Carey asked if the Board would make the determination on when the road would go in or does that come from a petition from the public.

Colleen Dowdall stated the way it is written, it would only happen if the road is needed to continue the cul-de-sac road as part of the grid system. There is undeveloped land to the west of this parcel. If someone came in and wanted to develop that land, building that road would become the responsibility of the future developer of the adjoining parcel as one of the ways of accessing that future subdivision.

Mike Moderie stated the drawing shows four no build zones for future possible roads.

Colleen Dowdall stated that was incorrect, there was only one no build zone that would be designed for roads. The others no build areas exist so the lots could be split in the future. The staff report reflects that in the findings and conclusions. The no build zone at the end of the cul-de-sac is the only one for roadway purposes.

Allison Handler stated the condition states it is for the no build area on Lot 4.

Mike Moderie stated his notes said there should be an RSID waiver for protest if sidewalks are not built.

Allison Handler stated that was already on the plat.

Mike Moderie stated the same thing applied to the storm drain system.

Allison Handler stated that was in Condition 4.

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

Commissioner Evans moved that the Board of County Commissioners approve the variance request to vary from Section 3-2(5)(A) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision; and approve the variance request to vary from Section 3-3(1)(D)(2) of the Missoula County Subdivision Regulations to divide a lot by a public access easement provided for future development of a roadway, both based on the findings of fact set forth in the staff report. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve Marvin Gardens Summary Subdivision, based on the findings of fact, inserting the revised findings as listed on the November 24, 1999 memo from Allison Handler into the staff report to replace the appropriate sections as listed, and subject to the conditions in the staff report. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Marvin Gardens Summary Subdivision Conditions of Approval:

Roads

1. The plat shall be revised to clearly identify the "no building zone" on Lot 4 as a 54-foot "conditional public access easement." *Subdivision Regulations Article 3-2, OPG and County Attorney recommendation.*
2. Road engineering plans and specifications for Lois Lane and for improvements to Flynn Lane shall be approved by the County Surveyor's Office prior to final plat approval. *Subdivision Regulations Article 3-2(5), OPG and County Surveyor recommendation.*
3. The RSID statement that appears on the face of the final plat shall be amended to include the following sentence:

"The lot owner shall connect to public sewer within 180 days after public sewer is installed and available in the public right-of-way adjacent to the property." *Subdivision Regulations Articles 3-1(1)(D) and 3-7(2).*

4. A. Grading, drainage and erosion control plans, including calculations for a 5-year frequency storm and a soils analysis, shall be reviewed by the City Engineer and approved by the County Surveyor prior to final plat approval. *Subdivision Regulations Articles 3-4, 4-1(12), County Surveyor and City Engineer recommendation.*
- B. The following statement shall appear on the face of the plat:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for storm drain construction, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land." *Subdivision Regulations Article 3-4, County Surveyor and City Engineer recommendation.*

Fire

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

Airport

6. An avigation easement shall be obtained for the property in compliance with the Airport Influence Area Resolution and shall be recorded with the Missoula County Clerk and Recorder prior to final plat approval. *Subdivision Regulations Article 3-1(2) and Airport Authority Request.*
7. The following statement shall appear in the covenants and on the face of the plat:

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

The covenants shall be amended to include information about airport noise subject to Airport Authority approval prior to final plat approval. *Subdivision Regulations Article 3-1(2), 4-1(12) and Airport Authority Request.*

Weeds

8. A Revegetation Plan for Disturbed Sites and a Noxious Weed Management Plan shall be approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*

Consideration: Dorsman Subdivision for Lease/Rent (Frenchtown Area)

Kelley Segars, Office of Planning and Grants, presented the staff report.

The applicants, Hal and Cheryl Dorsman, are requesting approval to add 1 dwelling unit to a 21.8 acre property where one dwelling unit currently exists. The property is located approximately 2 miles northeast of Frenchtown on Springhill Drive, which is a private road. The Dorsman are proposing to build a garage with an apartment above. They are putting in an additional septic system that the Health Department is prepared to approve after subdivision approval. The property is unzoned. The 1975 Comprehensive Plan designates part of this property (20 acres) as Open and Resource with one unit per 40 acres. The other part of the property, on which both dwelling units will be located, is designated Low Density Rural with one unit per 10 acres. There are five recommended conditions of approval. Condition 1 is an RSID waiver for public sewer and water systems in the future. Condition 2 is establishing that the applicant has a legal source of water for the additional dwelling unit. Condition 3 is fire district approval of water for firefighting. Condition 4 is the standard \$100 fee to the fire district for the additional dwelling unit. Condition 5 is a development covenant with the fire district which includes a turnaround for fire apparatus at the end of Springhill Drive, the private road, an all weather surface for the driveway and evidence of ongoing maintenance for Springhill Drive. This property is in a wildland/residential interface zone and there are some concerns about vegetation and protecting the property from wildfire. Those concerns are covered under Condition 5. Springhill Drive varies between 18 feet and 22 feet wide and regulation calls for a 24-foot width, so a variance is being requested. Staff is recommending approval of the variance request and approval of the Dorsman Subdivision for Lease or Rent.

Acting Chair Carey asked for public comment.

Jack Sprague stated this was an apartment and asked if there was any kind of limitation as to the number of individuals that could live there?

Colleen Dowdall stated a septic permit makes an estimates of individuals living on the premises based on the number of bedrooms, etc. Legally, the number of individuals living in the apartment cannot be restricted under any existing rules.

Jack Sprague stated the residents in the area pay \$30 a month for road maintenance. Would that be part of the agreement also?

Colleen Dowdall stated she did not know if evidence of an agreement in writing for road maintenance had been found.

Kelley Segars stated a letter from the Dorsmans regarding the road maintenance situation is included in the application packet.

Colleen Dowdall stated staff was trying to assure that road maintenance does occur so that emergency vehicles can get to the property. Often time's lenders want to have proof of road maintenance on a private road. A written agreement that is recorded could be offered as proof. The agreement is between the residents, the County's only interest is in making sure the road is maintained.

Dana Sprague stated he lived on Wildflower Road. He was concerned about the number of people moving into the area as there is limited water available. He had spoken to Mr. Dorsman about the situation. He did not have a problem with Mr. Dorsman's father moving in, he was worried about a large number of people moving into the apartment in the future. Another concern in the future, if the apartment is rented out, would be more use of the road. He would like to see a renter contribute to the road maintenance. He would also like a written agreement with Mr. Dorsman that the apartment would not be rented to more than one or two people.

Acting Chair Carey stated that counsel has stated the County has no jurisdiction on the number of people living there. That would be between the neighbors.

Colleen Dowdall stated agreements for water, road maintenance, etc., could be entered into by the residents. The County is in no position to enforce those agreement for the residents.

Mark Burke stated he lived directly next to the Dorsmans on 110 acres. He and his wife moved to the area for the rural setting and peace and quiet, to be away from development. They feel it is great that Mr. Dorsman wants to move his father up there to be near the grandchildren. Their concern is in the future having this become a rental unit and having additional people. That would forever change the character of the neighborhood. It is currently single family landowners. Another concern is the road. It is substandard and adding more homeowners to it that were not planned for would affect fire safety and create other problems. Another important issue is the water system as mentioned by Mr. Sprague. When this land was originally developed, it was difficult to get water so a community system was put in. About 4 years ago, the Dorsmans, Mr. Sprague, Mr. Rockwell and himself got together to make sure they were the only ones on the system because they did not feel it could support any more people. They have spent several thousand dollars during the past 4 years to accomplish that. In March an agreement was reached among the four families. Their system conveys limited resources and it is for the benefit of the four landowners to the exclusion of all others. He felt if another unit was put in and tied to this water system, it would be a fifth household on the system. Legally, the County cannot get involved with this matter. His understanding was that part of the determination was that the resources were not harmed by increasing the densities.

Sonny Rockwell stated he was the fourth member of the water system in the area. He opposed this action due to the fact that it was never brought up to them in the first place. He felt there were others ways, rather than have a separate building

structure, that Mr. Dorsman could tie this to his house. That would relax any concern about a rental unit. If this were an addition to the house, it would not be a rental.

Lynnette Sims stated she and her husband live directly across from the Dorsmans. They are the only ones who have a true view of the Dorsman's property. When the signs first went up regarding this subdivision, there was a lot of fear for subdivision of land, but they now understand that is not the case. They felt that anybody on Springhill could at any time rent out a basement, an upstairs, a bedroom, and that should not be restricted. Everyone should have lawful, unrestricted use of the land. The Dorsmans are very kind, thoughtful neighbors, just like the rest of their neighbors. They are always willing to talk to everyone about situations. They keep their land very nice and neat. What they have proposed with their separate dwelling structure will be very beautiful and well built. They did not have any problems with the proposal. With regard to others moving into the area, change is hard, there are other tracts of land for sale up the road. Anyone could move in at any time and build. They are not directly involved with the water system, but it seems like if the Dorsmans stick to their share, regardless of whether it is attached to their house or a separate dwelling, they are allotted their share as a landowner and should be allowed to use it however they see fit.

Henry Dorsman stated he was the property owner requesting this subdivision. As far as the water system is concerned, there is more than ample rights to go around. They presently have 2 gallons per minute water rights nine months out of the year and have water rights on 1/3 of a well that presently pumps at five gallons per minute. He estimated they average less than 1/5 of their total water rights. There is no provision in the water maintenance agreement that prohibits additional living space, which is essentially what they are doing. There is no consideration whatsoever of subdividing. There is a clause in the water system agreement that prohibits subdividing tracts and selling off a tract and with it a share in the water system. That is clearly not what they are doing. The water and road issues are a matter of private contract. He has discussed this with some of his neighbors and they have agreed to limit the number of people, by covenant and by addendum to the water system agreement, to alleviate their fears of multiple people moving there in the future.

Commissioner Evans stated the water system is not much of a concern to her, if the relative lived in the house, he would also use water. The same amount of water would be used no matter what location he lives in. She was concerned about road maintenance and asked Mr. Dorsman what was anticipated?

Henry Dorsman stated in lieu of a formal written agreement, there is an informal agreement where everybody pitches in and pays a fair share. They have always contributed their fair share as well as considerable volunteer labor for road maintenance. He has lobbied in favor of doing a written road maintenance agreement. So far that has not been responded to adequately. Some of his neighbors may feel he has not contributed to the road maintenance agreement but that is only because there was a bank account with one, sole signatory on it with no written agreement on how the money was to be spent or guidelines on usage of that money. He did not believe that was appropriate. A second signatory has been added to the account but there is still no written agreement. A written agreement is a matter of public record and he will continue to lobby in favor of that. Considerable maintenance to the road has been done and it is in better shape than it was in the past and they continue to make improvements on a regular basis.

Commissioner Evans stated her main concern with the road was safety and the fire department's request that the road be maintained in a way that allows them access. She wants to make sure that is the case and that maintenance will continue.

Henry Dorsman stated Scott Waldron, Frenchtown Fire Chief, inspected the site and he recommended future improvements, however he considers the road to be adequate at this time.

Mike Moderie asked how many households were on this road?

Henry Dorsman stated there were seven presently, in their immediate community, but there were more farther down the road about a mile or so.

Mike Moderie asked how many households used the road?

Henry Dorsman stated there were seven households that use the road.

Commissioner Evans suggested the residents did need a written road maintenance agreement so that everyone contributes their fair share and everyone is safer when the road is passable for the fire department.

Cheryl Dorsman stated she does have a spreadsheet that shows an accounting of contributions and expenditures for the road maintenance fund.

Colleen Dowdall stated in regard to the road maintenance agreement, because it is a private road, the County is not in a position to make the residents maintain the road. The County is required, in her opinion, to make sure there is a mechanism available for them to provide for the funding to pay for maintenance. There is one rural fire department that was involved in a similar situation who said that if the road was not maintained, they would not respond in an emergency, they would not risk their firefighters or equipment. The residents were made aware the fire department would not respond because their private road was not maintained. That is the County's only concern, to make sure the residents are safe, as a part of subdivision review, this is required. If the road were not maintained, it would be none of the County's business, but because it has come forward for review, it now becomes County business. She also wanted to address who could rent out what. If this were being done in most any other County in the state, there would have been no review. Missoula County believes that when someone wants to add an additional house in a residential area, it causes an additional impact and needs review. Previously, deals had been made that this type of dwelling could be built for an ailing relative, but once it was no longer occupied by that relative, it would be taken out. That was impossible to enforce. The relative would die and the dwelling would then be rented out. Neighbors then sued the County asking them to enforce the agreement. This was impossible. Instead, the County decided all such subdivisions for lease or rent needed to be reviewed. The term subdivision for lease or rent offends many people, it is not their intention to subdivide. But by this review, the County is able to address safety, resource and other issues. The County has continued with this process even though it has been difficult at times. The water system is a separate agreement, the County cannot get involved with that.

Acting Chair Carey stated he still had a concern about road maintenance and wondered how that could be resolved.

Dana Sprague stated he currently does the snow plowing for the road. Mr. Dorsman has helped in the past. During a discussion with Mr. Dorsman, it was agreed that if this dwelling is rented in the future and Mr. Dorsman were receiving income, he would contribute another portion on the road. This needs to be put in writing by the neighbors. He asked if a formal agreement was something that needed to be on record at the courthouse?

Colleen Dowdall stated she believed all parties needed to sign an agreement that is notarized and recorded with the Clerk and Recorder. She had some samples she would be happy to share with the residents.

Acting Chair Carey asked if there was assurance a road maintenance agreement would be taken care of?

All parties stated such an agreement would be prepared and filed.

Mike Moderie suggested with seven houses using this road, they should try to get the minimum road width to 20 feet, although it did not need to be a requirement.

There were no further public comments.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations for Springhill Drive to vary from a 24 foot width to the existing condition of an 18 foot to 22 foot road width, based on the findings of fact in the staff report. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve the Dorsman Subdivision for Lease or Rent, based on the findings of fact and subject to the conditions in the staff report and assurance from the residents on road maintenance for safety purposes. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Dorsman Subdivision for Lease or Rent Conditions of Approval:

1. The lot owner shall file a document of record prior to final plan filing waiving the right to protest participation in a future RSID/SID for public sewer and water systems based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land depicted herein. *Subdivision Regulations Article 3-7(2).*
2. The applicant shall establish that he has a legal source of water for the additional dwelling unit. *Subdivision Regulations Article 3-7(1).*
3. The Frenchtown Rural Fire District shall approve provision of water for firefighting purposes prior to plan filing. *Subdivision Regulations Article 3-7(1).*
4. The developer shall contribute a \$100.00 water fee to the Frenchtown Rural Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants prior to plan filing. *Fire district recommendation.*
5. A development covenant shall be filed, subject to OPG, fire district, and County Attorney approval, to include the following items related to providing fire department access, minimizing potential wildlife conflicts, and addressing wildland/residential interface standards:

Fire Mitigation:

- A. Turnaround for more than one piece of fire apparatus shall be provided at the end of Springhill Drive. *Missoula County Subdivision Regulations Article 3-2(1)(E) and fire district recommendation.*
- B. The driveway driving surface to the proposed home site shall be a minimum of 12 feet in width with a minimum unobstructed width of 20 feet wide and 13 feet 6 inches high, with an all-weather surface. *Missoula County Subdivision Regulations Article 3-2(3)(C) and fire district recommendation.*
- C. The property owner needs to provide evidence of ongoing maintenance for emergency vehicle access and visibility. *Missoula County Subdivision Regulations Article 3-2(1)(I) and fire district recommendation.*
- D. The property owner shall create a defensible space for fire protection purposes as approved by the appropriate fire jurisdiction. Vegetation shall be removed and reduced around each building according to the slope. Single ornamental trees or shrubs need not be removed as long as all vegetation near them is reduced according to the guidelines established by the fire jurisdiction. Ornamental trees and shrubs should not touch any buildings. When planting the property owner shall select trees, shrubs and vegetation from native vegetation stock when possible that limit or retard fire spread as suggested below:
 - i. Perennial: Choose hardy perennial flowers that are adapted to the climate of the area. These green, leafy, succulent plants are difficult to burn. Watering and regular weeding improves fire resistance.
 - ii. Shrubs: Evergreen shrubs such as dwarf conifers or junipers tend to ignite easily: avoid them unless well spaced.
 - iii. Trees: Deciduous trees can be clumped, scattered, or planted in greenbelts or windbreak patterns. Evergreen trees tend to ignite easily and should be spaced accordingly.

See Missoula County Subdivision Regulations vegetation reduction guidelines and use applicable slope for required standards. *Missoula County Subdivision Regulations Article 5-1(5)(H), Missoula County Subdivision Regulations Appendix VII, fire district recommendation*

- E. Only Class A or B fire-rated roofing materials shall be used for any new construction. *Missoula County Subdivision Regulations Article 5-1(5)(H)*

There being no further business to come before the Board, the Commissioners were in recess at 2:50 p.m.

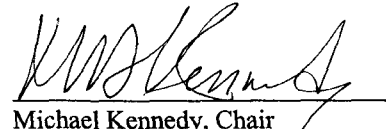
THURSDAY, NOVEMBER 25, 1999

The Board of County Commissioners did not meet in regular session. The Courthouse was closed for the Thanksgiving Day holiday.

FRIDAY, NOVEMBER 26, 1999

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


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, NOVEMBER 29, 1999

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

Site Inspection – In the afternoon, Commissioner Evans accompanied County Surveyor Horace Brown on a site inspection for the request to alter a portion of Blue Mountain Road.

Claims List -- Commissioners Carey and Evans signed the Claims List, dated November 29, 1999, batch number 351, with a grand total of \$6,831.53. The Claims List was returned to the Accounting Department.

Resolution – The Commissioners signed Resolution No. 99-088 to zone the "Big Hill" portion of the Maloney Ranch from unzoned to C-A1 (Open and Resource Lands). The property is described as Lots 2, 3, 4, 6 and 12, and those portions of Lots 1, 5, 7 and 8 of COS #4815.

Agreement – Chairman Carey signed an Agreement with Community Medical Center to provide the services, supplies and equipment necessary to enable the County to plan, construct, equip and operate a Clinic in the Missoula County Detention Facility. The County will pay Community Medical Center the sum of \$26,349.80 for the services, equipment and supplies on or before October 11, 1999. The County will pay Community Medical Center the sum of \$74,000.00 for the management services and staffing provided for the period from November 1, 1999 through June 30, 2000. The term of the Agreement is October 11, 1999 through June 30, 2000.

Extension Request – The Commissioners signed an Extension Request from Westmont Builders/Developers, Inc. for the purpose of extending the Option Period to September 30, 2000 for the Option Agreement recorded at Book 564, Page 0230, pertaining to Reserve Parcel "B" in the Missoula Development Park.

TUESDAY, NOVEMBER 30, 1999

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

Claims List -- Commissioners Carey and Evans signed the Claims List, dated November 30, 1999, batch numbers 348 and 349, with a grand total of \$70,197.90; the Claims List, dated November 30, 1999, batch number 350, with a grand total of \$1,406.45; and the Claims List, dated November 30, 1999, batch numbers 353, 346, 347, 316, with a grand total of \$68,988.69. The Claims Lists were returned to the Accounting Department.

Meeting re: Farm Lane Rural Special Improvement District

Commissioners Carey and Evans met with representatives of WGM Group, Colleen Dowdall and representatives of County Surveyor's Office to discuss paving of Farm Lane.

The group agreed to pave Farm Lane from edge near Lewis and Clark Dr. on the west, and to continue easterly, with 24 foot wide asphalt travel lanes, 6 foot paved walkway on each side of the road, and 2 foot gravel shoulders adjacent to the walkways. The walkways and road will be separated by a double white stripe to be provided by Missoula County. There will be appropriate drainage ditches on both sides of the road.

Assessment of the RSID will be based on number of dwelling units. It will be a 15-year bond. Nick Kaufman of WGM Group indicated another public information meeting would be held.

The properties assessed will include Orchard Park phases I and II, Rossignol Orchard Tracts Phase II, any other parcels fronting on Farm Lane, the Mytty multi-family parcel, and the Catholic church (nothing east of the last two will be assessed).

The Board of County Commissioners and Horace Brown, County Surveyor, agreed on these issues.

ADMINISTRATIVE MEETING

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

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with the Montana Asian American Center for a cultural and aesthetic project funded by the Montana Arts Council with Missoula County serving as sponsor. Duration of the Agreement is July 1, 1999 through June 30, 2001. Value of the Agreement is up to \$4,000.00.

Payroll Authorization Form – The Commissioners signed a Payroll Authorization Form for the Montana Disaster and Emergency Services Division, changing Gwen Sebestin's hourly salary from \$9.61/hour to \$9.91/hour effective December 16, 1999. The form was returned to the Office of Emergency Management.

Resolution – The Commissioners signed Resolution No. 99-089, a Budget Amendment for the Office of Planning and Grants in the amount of \$10,400.00.

Budget Transfer – The Commissioners signed a Budget Transfer for the Health Department in the amount of \$30,000.00 because the Chutney Foundation award was more than anticipated in FY2000 budget.

Other items included:

- 1) The Commissioners approved a 6% increase for the lease of space at 301 W. Alder for the Office of Public Assistance. Rent will change from \$5,788.33 to \$6,135.62 per month.

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

WEDNESDAY, DECEMBER 1, 1999

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Kennedy was out of the office through December 3.

PUBLIC MEETING – December 1, 1999

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Bill Carey. Also present were Commissioner Barbara Evans, County Surveyor Horace Brown, Chief Civil Attorney Michael Sehestedt and Deputy County Attorney Colleen Dowdall. Commissioner Michael Kennedy was out of the office for the week.

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$147,424.57. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Approval of Larchmont Golf Course FY 2000 Budget

On November 23, 1999, the Larchmont Golf Course Advisory Board voted unanimously to recommend passage and adoption of the Larchmont Golf Course Annual Budget, Capital Replacement and Debt Reduction Schedule, and Fees for 2000. This budget causes no fiscal impact or budget implications to the Missoula County Budget.

Commissioner Evans stated the Commissioners had already discussed the Larchmont budget at the board meeting.

Commissioner Evans moved that the Board of County Commissioners approved the Larchmont Golf Course Annual Budget, Capital Replacement and Debt Reduction Schedule, and Fees for 2000 as presented. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Bid Award: Trench at El Mar Sewer Lagoon

Paul Webber, Chief Administrative Officer, presented the report.

This is a bid award for the improvements to the seepage trench and sump at the El Mar Wastewater Lagoon. HDR Engineering solicited formal bids on behalf of the County. Five contractors were present at an on-site pre-bid conference on November 22, 1999. Two bids were received and opened on November 29, 1999: one from Kahia, Inc. in the amount of \$9,100.00 and one from AAA Construction in the amount of \$18,215.00. It is the recommendation of HDR Engineering and the CAO that the bid be awarded to Kahia, Inc., in the amount of \$9,100.00.

Acting Chair Carey asked Paul Webber when work would commence?

Paul Webber stated the insurance certificate had been received from the contractor. The contractor is waiting for the order to proceed. Work could commence within the next few days.

Commissioner Evans moved that the Board of County Commissioners award the bid for the trench at the El Mar Sewer Lagoon to Kahia, Inc. (Ron Printz) in the amount of \$9,100.00, based on the recommendation of staff. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Decision: Petition to Alter a Portion of Blue Mountain Road

This is a petition to alter "A portion of Blue Mountain Road from the west boundary of the Knapp property (Tract A of Certificate of Survey 2621) to the west boundary of the Orendain property (Tract B of Certificate of Survey 2621), located in Section 34, Township 13 North, Range 20 West, Missoula County, Montana."

The reasons for the request are as follows:

1. Safety reasons.

The following landowners have been notified: George Knapp, 2445 Blue Mountain Road, Missoula, MT 59804; Helen Hayes Orendain, Andrea D. Orendain, 2555 Blue Mountain Road, Missoula, MT 59804.

The public hearing on this matter was held Wednesday, November 24, 1999. A site inspection was conducted by County Surveyor Horace Brown and Commissioner Barbara Evans on Monday, November 29, 1999.

Horace Brown stated the reason for altering this right-of-way is that the road has been reconstructed to straighten it out. The right-of-way now needs to be aligned with the centerline of the newly constructed road.

Commissioner Evans moved that the Board of County Commissioners approve the petition to alter a portion of Blue Mountain Road from the west boundary of the Knapp property (Tract A of Certificate of Survey 2621) to the west boundary of the Orendain property (Tract B of Certificate of Survey 2621), located in Section 34, Township 13 North, Range 20 West, Missoula County, Montana. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Consideration: Resolution Establishing Rules and Guidelines for Users of the Sunset West Water System

Paul Webber, Chief Administrative Officer, presented the report.

This is a request to consider the resolution which establishes rules and guidelines for the users of the Sunset West water system. The County, through the RSID process, began operating this system July 1, 1999. Previously, the old system was operated by the Homeowners Association. The proposed rules are very basic and are intended to alert potential abusers of the system that they may lose water service if they disregard the basic rules. A draft of these rules was sent to the Homeowners Association who submitted suggestions for minor changes. The rules should help prevent waste.

Commissioner Evans asked if these proposed rules had been sent to the users of the system?

Paul Webber stated a copy would be sent to all the residents when they are approved. A draft copy was sent to the president of the Homeowners Association who recommended some minor changes. A copy has also been provided to the Deputy County Attorney for his review, and to the operator of the system for their comments. Those comments have been considered and incorporated.

Acting Chair Carey asked Paul Webber if the president of the Homeowners Association had shared the draft with other members of the association?

Paul Webber stated the president had not.

Commissioner Evans asked if the rules were amendable?

Michael Sehestedt stated they were amendable and the proposed regulations were basically formalizing in writing what had been verbalized to the residents at previous public meetings.

Commissioner Evans moved that the Board of County Commissioners adopt the resolution to create the rules and guidelines for the users of the Sunset West water system, recognizing they can be amended in the future if necessary. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Consideration: Otto's Acres (4 lot subdivision) – South 3rd Street West

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

The applicants, Rick and Stephanie Ammons, are requesting approval to divide a 6.71 acre parcel into 4 lots, ranging in size from 1 to 3.02 acres in size. There is also a proposed boundary line relocation that will be filed that increases the area of a small parcel in the northwest corner. The property is located on the south side of South Third Street West, between Howard Street and Tower Street.

The surrounding land uses are mostly single family residential and the property is zoned C-RR1 (Residential) with a maximum density of one dwelling unit per acre. The 1998 Urban Comprehensive Plan designated suburban residential land use with a maximum density of two dwelling units per acre.

There are two houses currently on the proposed subdivision and there is also a home located on Portion A of the area included in the boundary line relocation. Proposed Lot 1 will continue to be accessed from a driveway off of South Third West. The driveway serving proposed Lot 2, is proposed to serve as the access to Lots 3 and 4 as well. They also proposed a no build zone on Lot 3 to provide for the possibility of a future through connection to South Seventh West.

Staff has recommended that the easement serving Lots 3 and 4 be realigned to connect to South Third West along the western boundary of Lot 1 instead of crossing onto Lot 2, and that the easement be extended to South Third West instead of crossing Lot 2. The County Surveyor stated that Lots 3 and 4 could share a driveway located within that easement and, while it is not a preferred situation, that the existing driveway onto Lot 2 could remain there temporarily and that approach onto Lot 2 would have to be abandoned at such time as Red Stables Lane actually becomes a road, when three properties are using it. Staff has also recommended that the no build zone on Lot 3 be shown as a conditional public easement, as noted in Condition 3 in the staff report.

The applicants requested a variance from the requirement to provide walkways in the subdivision. The proposed plat does include a statement waiving the right to protest a future RSID for walkways on South Third West. The County is currently installing walkways along South Seventh West and the Surveyor stated it possibly would not be feasible for the County to install walkways on South Third West on the south side; there is not enough right-of-way. Because South Third West is one of the main east/west connections, staff is recommending that a five-foot wide walkway be installed, as noted in Condition 5.

The plat shows utility easements along South Third West and Red Stables Lane, but it does not show a utility easement on the northern portion of the property where there is an existing power line. Condition 11 requires that the public access and utility easement be extended to include the power line that is already located on the property and that would also include easement for a walkway installation.

There is an irrigation ditch located south of the southern property line and the plat shows easements to each of the newly created lots. The lots would be served by individual wells and septic systems. The property is located in the Wastewater Facility Service Area where sewer service is expected to be available in the next 20 years. Staff has recommended that the plat include provision for a future split of Lot 4, as noted in Condition 10.

There were two comment letters received from the public on the project. One from Orchard Homes County Life supported the narrow driveways and lack of sidewalks to retain a more rural feel in the area. The Target Range Homeowners Association supported the subdivision based on it furthering the rural nature of the community and there not be a no build easement designated for future home locations and that no sidewalks be required. They stated they understood the no build easement for future access to Lot 3, but they didn't feel any easement should be extended further onto the property. None has been recommended except for the provision on Lot 4 for some future split. The Target

Range Association had also suggested allowing some sort of equestrian easement at the back of Lots 3 and 4 as an alternative to walkways.

Staff is recommending approval of the subdivision with 11 conditions. There is a correction to Condition 6 to replace "private easement" with "Red Stables Lane." That easement has been recommended to be a public easement. Staff is recommending denial of the variance request to walkways.

Commissioner Evans asked Nancy Heil to elaborate on the walkways issue, others in the area favor not including them. Why did staff feel they were necessary?

Nancy Heil stated South Third West is one of the main streets that goes east and west in the area. The requirement for installation of walkways has been included on three subdivisions on South Third West in the fairly recent past. Staff was being consistent with that recommendation. Although incremental, gradually a walkway system could develop in the area.

Michael Sehestedt stated there have been a number of neighborhood concerns regarding pedestrian and school children safety in connection with Hawthorne School. Anything that can be done to solve those problems along South Third West merits doing.

Horace Brown stated South Third West will be widened, probably within the next three years. He requested that sidewalks be put in at the time, or after, the road is widened, because they may get torn up during the widening process. That could be done through an RSID or another method. If they are put in now, they probably will get torn up, which is a waste.

Acting Chair Carey asked for public comment.

Ron Ewart, Eli & Associates, developer's representative, was present, as was the applicant, Rick Ammons. The name, "Otto's Acres," was chosen because the former owner was Otto Tietz, who lived there a long time. Otto built the horse stables that still exist on the property. Mr. Ammons wanted to do something with this property that would retain the rural character. A lot of people live in the Target Range area because it still feels like being "in the country." Mr. Ammons does not want to develop the property to the maximum, which is why Lot 3 is 3 acres. It was hoped a buyer would want to purchase the entire acreage without dividing it up, and Mr. Ammons does have such a buyer. The buyer wants to buy both Lots 3 and 4 and put in just one house and perhaps some outbuildings. This is encouraging to Mr. Ammons in keeping with the rural nature of the property. On Portion A, the deal has not been finalized, so it is not known if the house in the far northwest corner will purchase Portion A. In the event they do not purchase Portion A, it will be included with Lot 3, increasing its size to 3.9 acres. There was a lot to think about in the conditions of this subdivision. He would like to address two items in the conditions. In Condition 3, they would propose it read: "A no build zone shall be shown from the hammerhead to the south property line. No structures, permanent improvement or utilities shall be placed within said no build zone so as to interfere with the eventual use of the right-of-way as a public roadway." He felt this proposed conditional public roadway on Lot 3 would become an issue. He felt it was a good idea to provide roadway connections and in some situations it is good to obtain such an easement. In this case, when the development potential of the property is not being followed through, then the no build zone is a good way to preserve the corridor. If eventually the property does become further subdivided, the public easement could be obtained at that time. There will be opportunities with other lots in this area to gain this easement. It is not as if it weren't granted now, it would never happen. The goal of the potential buyer for Lots 3 and 4, Tim Thromstadt, is to live there and have a small farm. The way Condition 3 is written is such that he has no control as to when or whether that becomes a road splitting his property, because it is contingent upon the property to the south becoming divided. That is totally out of the control of the property owner. This is like telling the property owner he doesn't really have this property, it is an easement but it is also for another use. That would be his proposal to change Condition 3. He can understand staff's point of view, it has come up before, but in this situation, he did not believe it was necessary, especially with the goals of the potential buyer of the property. This sale may not go forward if Condition 3 remains unchanged. The other issue has to do with the sidewalk. South Third West does not provide much room for a walkway. Of course, if more easement is granted there would be enough room. In driving South Third West, he felt it would be best to do an overall comprehensive plan of where a sidewalk should be built, rather than incrementally by separate subdivisions. Other subdivisions in the area have required walkways, but they have a specific beginning and ending point. On a short section of street such as this proposal, it would be more inconvenient than helpful, with its abrupt beginning and end. It would be better to do all the sidewalks at once and as Horace Brown has stated, this street is scheduled to be widened in the near future. They are willing to include a statement of a waiver of the right to protest an RSID that would include the installation of walkways. He appreciated the work of staff on this proposal. Again, the applicant's suggestions would be the change of wording in Condition 3 and the deletion of Condition 5.

Commissioner Evans stated with Horace Brown's comments regarding widening the road and possibly tearing up sidewalks, she did not want to see that happen. However, she did feel that South Third West was a busy street and would need a sidewalk. She did not know if an RSID waiver would be satisfactory. She wanted to guarantee that a sidewalk would not be put in only to be torn out, but when the street is widened, the sidewalks needs to be installed. Assuming no one else but this proposal develops in the meantime, that would leave an RSID for this one subdivision which would not happen. She did not want to wait for 10 years or so for the whole length of South Third Street to be developed. What method could Ron Ewart suggest that would guarantee that when the road is widened, that the sidewalk that would otherwise be required, be put in? She also asked the same question of counsel, what process could be used to provide a guarantee that when South Third West is widened and finished, that there will be a sidewalk for at least this property?

Ron Ewart stated a development agreement could be done.

Commissioner Evans stated that a development agreement that may be done with the current owners may not carry to the next owners. She did not want to impose a condition that would waste money.

Acting Chair Carey asked if Condition 5 could be amended with some kind of time frame?

Nancy Heil stated that would be a possibility. She was not aware that there were plans to widen South Third West so soon. For the record, the other subdivisions that required sidewalks are Moua Lane on South Third West, Orchard

Homes #5 Lots 21A and 21B, and Mimosa Place. A time frame for sidewalks on this subdivision would be a possibility if the widening had a fairly firm time frame.

Horace Brown stated this was a new program with the State on urban roads and was still in the discussion stages. He was not sure when it would happen, probably within the next three years.

Acting Chair Carey suggested something such as: "A five foot asphalt pedestrian walkway shall be installed along South Third Street West within a year after the widening of the road."

Colleen Dowdall stated she had some reluctance to that because the County has the ability to require that public improvements be done within only 2 years of the filing of the plat, which can be secured with a bond. If it is tied to some other time frame, it is more difficult to administer. This issue has had several in depth discussions to try to come up with a way it can be done.

Nancy Heil asked which side of the street was going to be widened? On that portion of South Third, the road is offset from the right-of-way.

Horace Brown stated a problem in this area is utilities, a decision has to be made as to whether to move them or put all the improvements on the south side of the road.

Commissioner Evans asked how soon the applicant was going to file the plat?

Ron Ewart stated the plat would be filed within 4 to 6 months. The road is 24 feet now, perhaps there will be a bike lane or walkway lane along it when it is widened.

Horace Brown stated the urban standards required it to be wider. He was not sure what would be done, the Surveyors need to do the design work before a decision is made as to its width.

Commissioner Evans asked if language in regards to the sidewalk could be such that the developer must enter into an agreement with the Surveyor's Office, approved by the County Attorneys Office, that would guarantee that when the road is widened that the sidewalk will be put in? That could require a bond or a developer's agreement that runs with land. She is not qualified to come up with what process be used, but she did want it to result in a walkway.

Colleen Dowdall stated this was a tough issue because if the period of time that passes is great, it would require constant administration to renew that agreement. By statute, it must be tied to plat approval, so within two years of plat approval, if the road wasn't widened, then the collateral and agreement would have to be renewed. She also did not know the road was going to be widened. The answer to this question is difficult.

Commissioner Evans stated that is why she would like it required that something be done that Horace Brown and the Attorneys Office and the Planning Office could agree on and have approval be contingent upon it.

Horace Brown stated they could leave the issue with the County Surveyor's Office would design that section of the road within the two year timeframe. A walkway could be built, even before the roadwork began, that would tie in with the road.

Colleen Dowdall asked if an estimate could be provided to determine a security amount, by plat filing.

Horace Brown stated the developer could estimate the cost of doing a walkway, the roadway wouldn't change that estimate. The irrigation ditch could change the estimate. It could end up with the walkway south of the irrigation ditch which wouldn't be a problem.

Nancy Heil stated the irrigation ditch is on the other side of the street in this location.

Acting Chair Carey stated it appeared it would be included in having the plans approved by the County Surveyor prior to filing. In his view, pedestrian walkways were needed.

Horace Brown stated there would be pedestrian walkways on South Seventh West. South Third West will be the last one left without sidewalks, but other places have priority over South Third West.

Colleen Dowdall stated Condition 5 comes close to what is wanted. It states they have put in a walkway. Our regulations and state law say that it has to be within 2 years from the date of filing the plat. However, they don't have to submit plans to the County Surveyors Office prior to plat filing.

Horace Brown stated the Surveyor's Office would provide plans for the road and they would have to provide plans showing that the sidewalks to be built will match that section of the road.

Colleen Dowdall stated the condition could be left as is.

Horace Brown stated it could be, but it may not be clear to someone else in the future what is happening.

Commissioner Evans asked for counsel and the Surveyor to work on language for this condition.

Acting Chair Carey asked Ron Ewart why would it not be in the public's interest to not require an easement for the no build zone?

Ron Ewart stated it may be in the public's interest if, in the future, the property to the south gets developed and the connection is made. However, it is not known if that will ever happen. In this particular situation, the potential buyer of the property wants to keep it rural, to keep the land for himself and not divide it. In this particular case it needs to be looked at separately. There will be other opportunities to get a through road between Third and Seventh between Howard and Clements Road.

Nancy Heil stated there were three different scenarios in which a public easement might be needed for future use. One would be if Lot 3 splits, that easement is wholly contained on Lot 3. The second possibility would be if Lot 4 splits, then an additional easement would be needed in order to reach the back of Lot 4. Once the plat is filed and the easement is shown as a no build zone, there is not a mechanism to guarantee that the no build zone could then be dedicated as an easement. The third scenario would be that one of the larger lots to the south of that property would split. That would access from South Seventh but an easement would be provided all the way to the north end of those lots so the potential would exist in the future for something to go all the way through. This is another issue that had been discussed at length, a no build zone does not allow the same type of options in the future as an actual easement does.

Ron Ewart stated there would be a statement on the plat stating why the no build zone was there. If there ever was any future subdivision activity on this property, then the easement could be obtained. The real issue is the potential buyer of this property would prefer that not go right through their property. He also did not see where it was in the regulations, it might be inferred, but he did not feel there was a regulation that says that an easement has to be given to someone else's property based on something that may or may not happen. Normally, he would not argue the point, but in this case there is not a public interest at this time; there may be in the future. He would like to know where specifically this was in the regulations. It is very important to Rick Ammons and if he knew this would happen, he might have done something differently.

Colleen Dowdall responded to the statement that if someone developed to the south, the easement could be obtained. The fact is, the County would have to rely on the landowner at that time to grant the easement or the land would have to be condemned and paid for. This is an effort to obtain the right to activate that easement at the time that it might be needed so that there could be a through street there if it was determined to be necessary. The County has been requiring these kinds of easement for many years. In the case of Miller Creek, to access Drake Lemm's subdivision, is one where the County was able to use the easement at the end of the cul-de-sac to provide a through connection. She wanted the Commissioners to know the easement could not be obtained later if it is just a no build zone without paying for it or having it offered.

Rick Ammons stated he was the owner of the property. He made clear that pieces of this land were bought separately at different times, it was not one large piece that was being divided. The people in the area are good friends of his and he wanted to live on this property but circumstances are such that he cannot do that. He did not want to have a bunch of development on this land. If this no build zone were to become a road, it would "T" off at Dr. Nickman's property and would end up occasionally with people in his front yard. Dr. Nickman would not want that. He understands the idea of this being for the public good, but he did not see a problem with the requirement for the County to buy the rights to go across that land. That land, at this point, does not belong to the County. He did not see a problem with the County buying the land when it was needed. His prospective buyer wants privacy. If this becomes a public road, a great deal of privacy is lost. He recognizes the land to the south may be sold and subdivided. He can understand the no build zone, but the public road be contingent on what the people want here. It is upsetting to think that if the land to the south is subdivided, there is automatically a road through his property. He knows the area and did not see the need for another road there, people want to live out there because it is private, quiet and rural. A road would hurt it a lot.

Commissioner Evans stated this was a difficult decision. From a planning perspective, it makes good sense to have an easement there. There are roads all over the County that don't connect, that are cul-de-sacs. From a privacy perspective, they are desirable and private. However, making it difficult for traffic to get around has the opposite effect.

Rick Ammons stated his prospective buyer would not be interested if that no build zone could all of a sudden become a public road. He feels the same way. He could break the land into small parcels and build duplexes and put in the road, but that is not what he wants to see happen to this land.

Commissioner Evans stated that counsel pointed out the developer's representative had offered the no build zone in his proposal and staff upgraded it to include the conditional public easement. She was not against allowing the no build zone.

Colleen Dowdall stated she pointed it out to show that the purpose of the no build zone was to provide for that future access, which was proposed by the developer. This no build zone, with the conditional easement, does not give the County the right to access that is allowed to be provided for when a subdivision is approved, so future planning and road connections can be made. The idea came from the developer, although staff would have thought of it as well. The development proposal talks about doing something conditional, which is what is proposed, that it be a conditional public easement. That means no one has the right to go back there even to go for a walk at this point. It would only be activated upon the occasions Nancy Heil listed, if Lot 3 splits or Lot 4 splits or a subdivision on the other side was needed and the Board decided to activate the easement. Nothing would happen automatically. It just preserves that strip of land for public access in the future.

Rick Ammons stated when he came to Ron Ewart with this project, he mentioned he did not want a bunch of hassles, he had several other things going on. He wanted to do it the right way without a lot of complications. Ron Ewart guided him expertly. He was aware of others who had protested no build zones and won. They are proposing a no build zone on that lot, but that the contingencies be different, to give power to the people who live there to say they don't want the road right now. If the County says it is needed immediately for a road, and comes to terms and a price, that is fair. He felt the County should buy it from the owners. Having it just taken away from the owners and put in a road did not sound good. He felt it should be in the hands of those who own as to when it happens.

Acting Chair Carey stated the Board is continually trying to balance the public and private interests. The Board has the responsibility to do what they can to protect the public's right to plan properly and make sure private parties are not injured. It is a difficult balancing act.

Nancy Heil stated she had another suggestion which may or may not further complicate matters. Currently the conditions read "if Lot 4 or Lot 3 or the property to the south." She wondered about changing to "and." In other words, if the properties to the south split, an easement would be required up to the property line. A road would be built to serve those properties. There would be an easement there from the south. At what point would a through road be needed all the way and how much would that be dependent on splits of either Lots 3 or 4. To further condition the opening of the



road, if Lot 3 split or Lot 4 split, then clearly public access would be needed. At that point a through road may or may not be needed because the lots to the south may or may not have split. The question would be if the lots to the south split, but Lots 3 or 4 are not split, is there any difference in what is thought about the need for it becoming a public and through easement. She was just suggesting it for discussion.

Colleen Dowdall stated even the split of Lots 3 or 4 does not really necessitate a through road, or even a public road, it just would need to be a road as opposed to a driveway. That contingency could be removed, the split of Lot 3 or Lot 4. It would just be contingent on lots developing to the south.

Rick Ammons stated one more aspect to the contingency would be that the people on Lots 3 and 4 also agree that would be a good thing, they don't automatically lose their right.

Colleen Dowdall stated she had trouble with the concept Mr. Ammons was suggesting. As a part of subdivision review, the County is permitted to exact certain things from developers, if there is good reason. It is believed that in this case a public easement through here is needed. It was not known there would be a potential buyer for both parcels. This is something the County has done, as recently as last week, to provide potential access. This is something the County feels they can ask for. If it is conditioned upon asking the owners permission, the County would not receive that permission.

Rick Ammons stated those people bought that property because it was private.

Acting Chair Carey stated it could cost the taxpayers a lot of money to obtain that permission.

Rick Ammons stating he was giving up something because it is less attractive.

Colleen Dowdall stated that the County needs to plan for the future and cannot have one landowner holding them hostage because the landowner does not think it is time to activate the public easement. That has to be a decision the Commissioners make. The County needs that right with this subdivision so they don't have to pay for it in the future.

Rick Ammons stated he would consult with Ron Ewart and his lawyers.

Ron Ewart thought what Nancy Heil brought up was a good point. If the condition could be worded some way so that if Lots 3 and/or 4 subdivided, that would give some control to the property owner. If the proper owner has no control, it is like this is not his land and any day a road could go through there. If this were the last piece of the puzzle to make a connection, it would be different, or if zoning was being maxed out. Here there are many parcels on either side and to the south where another connection could be obtained. If there is some way this can be tied to the division of Lots 3 and 4, that would maintain control for the landowner.

Commissioner Evans stated there was a regulations that says that a road should not split someone's property, and yet that is what is being suggested.

Colleen Dowdall stated as proposed, there are two separate lots.

Commissioner Evans stated that Mr. Ammons has someone who wants to buy both pieces of property.

Colleen Dowdall stated the regulations says that if this is all one lot, the road should not split the lot.

Commissioner Evans asked Mr. Ammons if that could be made one lot instead of two?

Rick Ammons stated they was nothing in writing or money from the prospective buyer, but that was a potential.

Commissioner Evans asked if Mr. Ammons wanted to postpone action on this subdivision. She felt Mr. Ammons did not want this conditional access and she had mixed feelings about it. However, if it were one lot, the County could not require that a roadway be put through as the regulations say that should not be done.

Colleen Dowdall stated that is what the regulations say, but on the subdivision done last week, a connection was required and the only one the developer could come up with split a lot, so a variance was requested to comply with the conditions. This is not just to provide an access from Third Street to Seventh Street. What is being provided for is an opportunity, as ownerships develop, that there is a connection in many places, not just one. There could be an situation which would require emergency vehicles to travel excessive distances to reach places only a few yards apart because of cul-de-sac after cul-de-sac.

Rick Ammons stated there was a ditch in this area that already required emergency vehicles to turn around and go back the other direction.

Commissioner Evans stated if a road were put through, there would be a culvert for the ditch.

Rick Ammons stated he understood that, but the fire department already handles it well the way it is.

Acting Chair Carey suggested this should be postponed. Right now, he would vote in favor of staff's recommendations.

Commissioner Evans requested Ron Ewart provide an extension request to develop something else that will satisfy these concerns.

Ron Ewart asked if they could bring this back before the Commissioners next week, December 8, 1999.

Colleen Dowdall stated written permission from the developer was needed.

Nancy Heil asked if a week would be long enough. If there was going to be a different kind of proposal, a week might not be enough time.

Ron Ewart asked for clarification so Mr. Ammons would know what to tell the prospective buyer, making Lots 3 and 4 one lot?

Commissioner Evans stated the County couldn't require that a road easement be put in.

Colleen Dowdall stated that such an easement was required just last week, for a potential connection. It was exactly the same thing as this request.

Nancy Heil stated if the subdivision were resubmitted with only three lots, they would be presenting a new plat which would require review addressing this same question of access. OPG would like to take a look at a new proposal and suggested delaying for two weeks.

Ron Ewart stated he was trying to clarify what Mr. Ammons should tell the prospective buyer. Staff was saying they would want to see a new proposal and then make a recommendation, so Mr. Ammons wouldn't know what to tell his buyer until that review was complete.

Commissioner Evans asked what would happen if this was required with the no build zone and the waiver of the right to protest an RSID through there, which means the owners of the land on both sides, if it is decided to put a road through there, have to make a contribution to that road. The contribution could be the right-of-way versus cash.

Nancy Heil stated her understanding was that an RSID waiver could only be required on a public right-of-way. That no build zone would not be a public right-of-way.

Colleen Dowdall stated this was another concept that could be discussed during the next two weeks. She was not familiar with this having been done before, but this is a unique situation and that might work.

Commissioner Evans was trying to find a way to help Mr. Ammons and still protect the public interest.

Commissioner Evans moved that this action be postponed for two weeks, until December 15, 1999, and a request from Ron Ewart was needed asking for the postponement.

Ron Ewart stated that was not a problem but Mr. Ammons still did not know what to tell his prospective buyer. This might result in the buyer backing out of the deal and allowing another developer to purchase the property and develop it to its fullest extent.

Colleen Dowdall stated Mr. Ammons could tell the buyer what the dilemma was and find out how the buyer felt. Nancy Heil and others would be talking to Mr. Ewart during the ensuing time.

Ron Ewart stated the buyer wants to purchase Lots 3 and 4 and have his own little ranchette. If that were combined into one lot, would the easement then only go from South Third West to the northern boundary of the combined lot?

Commissioner Evans stated if all parties could come up with something that is satisfactory to Colleen Dowdall, they could bring it back to the Commissioners tomorrow. It did not have to wait until December 15, 1999, a decision could be made administratively.

Colleen Dowdall stated Ron Ewart needed to discuss this again, but even having additional conversations within a week would be difficult.

Nancy Heil stated everyone would benefit from more discussion.

Acting Chair Carey stated Commissioner Evans had made a motion to delay, and he would vote in favor of that motion.

Commissioner Evans voted in favor of the motion contingent upon getting a request from the developer.

Acting Chair Carey stated this was ironic for him. He wanted to help people like Mr. Ammons do the right thing with the land, on the other hand the Commissioners have an obligation to the public interest as well.

Rick Ammons stated for the record that he requested a two-week extension.

Consideration: Avery Acres (2 lot Subdivision) – Trails End Road (Miller Creek Area)

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

Darius and Janet Palen, represented by Eli & Associates, is requesting approval to split a 35.61 acre parcel into 2 lots, 24.38 acres and 10.78 acres in size. The property is located off of Trails End Road in the Upper Miller Creek area. It is located in the Miller Creek Land Sensitive zoning district.

There is a home on Lot 2 now and the proposal is to have another homesite on Lot 1. The Miller Creek Land Sensitive zoning district was created to protect wildlife habitat, open space characteristics and slope and preserve neighboring hillsides. This property is on a hillside. The zoning district was divided into four different zones, this is located in Zone D. Each of these zones were allotted a specific number of residential units. Zone D was allotted 6 units and also has some no build areas, to preserve those things that the district was created for. This proposed homesite on Lot 1 will be the sixth and last residential unit in Zone D.

This subdivision is located off Trails End Road which comes off Miller Creek Road and will add another home to the traffic that depends on the Miller Creek Road system. One condition staff is recommending is that an \$1,800 fee be paid for this new lot to the Miller Creek Road Improvement Fund. The applicant has asked for a variance from the pavement width of Trails End Road. The easement width is correct, but the pavement width is 22 feet with 2-foot gravel shoulders on each side. The requirement is for a 24-foot pavement width. They are also asking for a variance from pedestrian walkways on Trails End Road. Staff is recommending approval of these two variances, with the condition that notes on

the plat for RSID waivers for road improvements and walkway improvements are included. Currently the plat has those notes for Trails End Road and staff is recommending the condition that it also has notes for those improvements on Miller Creek Road.

The fire chief has commented that fire protection would have to be provided by water tenders and that response time would likely exceed 10 minutes in this location. He asked for conditions that \$100 per new lot be contributed to the large diameter hose fund and that the new home have residential fire sprinklers. Residential fire sprinklers have been required on other subdivisions in the area recently. One such subdivision was Evans Ridge, which is directly below this location, making this a consistent requirement in the area. Staff has included both of those as conditions of approval.

Staff is also recommending the condition that new driveway design be reviewed and approved by the Rural Fire District and County Surveyor. The Surveyor commented there may be a sight distance problem at this location which could be addressed during this review. A new approach permit would be required for Lot 1. Staff is recommending a driveway maintenance agreement be filed or included in the covenants for the shared accesses and individual driveways. This would guarantee the fire district could gain access when needed.

There is a private access on the property to allow access to undeveloped property to the south and also for the utility companies to maintain the utilities that cross the property. There is a Montana Power line, a Bonneville Power line and an underground gas line. The distance from the gas line to the test well site where the homesite is proposed is approximately 450 feet. The report contains information about the effects of power lines on residential uses and shows the electro-magnetic field effect is negligible beyond approximately 400 feet from the power line. The proposed homesite falls outside that radius. There is a condition that the all easements be included on the plat before filing, including any additional private access easements the owner thinks may be on the property.

Staff recommends approval of the two requested variances and approval of the two-lot subdivision subject to the seven conditions in the staff report.

Acting Chair Carey asked for public comment.

Ron Ewart, Eli & Associates, developer's representative, was present. He stated the name of the subdivision comes from Mr. Palen's new granddaughter Avery. Mr. Palen's son-in-law works for Eli & Associates. Mr. Palen lives on proposed Lot 2. The Land Sensitive zoning was complicated and this is the last house that would be allowed in Zone D. Lot 1 has a nice uniform slope and good site for a house. There is a great view as well. He felt there was adequate sight distance at the entrance to Trails End Road, it was at least 300 feet to the southwest and over 500 feet to the north. The same access will be used and a new approach permit will be obtained. They are in agreement with the conditions as noted in the staff report.

There were no further public comments.

Acting Chair Carey asked if the sight distance question needed to be dealt with?

Horace Brown stated the applicant might have to mitigate the sight distance with signs notifying the public that a driveway exists.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision, and approve the variance request from Article 3-2(3) of the Missoula County Subdivision Regulations for the public road to vary from the required 24 foot pavement width to the existing 22 foot width, both based on the findings of fact set forth in the staff report. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve Avery Acres Summary Subdivision based on the findings of fact in the staff report and subject to the conditions in the staff report. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Avery Acres Summary Subdivision Conditions of Approval:

1. The subdivider shall mitigate the traffic impacts generated by this subdivision on the Miller Creek transportation system by contributing to the fund for Miller Creek Road improvements in the amount of \$1,800 per new lot. *Subdivision Regulations Article 4-12, County Surveyor and OPG recommendation.*
2. The following statement shall appear on the face of the plat and in each instrument of conveyance:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for improvements to Miller Creek Road, including installation of pedestrian walkways or bikeways, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land.." *Subdivision Regulations 3-2(5) and OPG recommendation.*
3. A home built on Lot 1 shall be required to install residential fire sprinklers. This requirement shall be included in the covenants. *Subdivision Regulations Article 3-7, Missoula Rural Fire District and OPG recommendation.*
4. The developer shall contribute \$100.00 per new lot or dwelling unit to the Missoula Rural Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants at the time of plat approval. *Subdivision Regulations Article 3-7(2) and Missoula Rural Fire District recommendation.*
5. Final plans for the driveway location and design on Lot 1 shall be approved by the County Surveyor's Office and Missoula Rural Fire District prior to plat approval. *Subdivision Regulations Article 3-2, County Surveyor, Missoula Rural Fire District and OPG recommendation.*

6. A driveway maintenance agreement shall be filed with the County Clerk & Recorder's Office, or included in the covenants, that addresses maintenance of shared accesses and individual driveways, subject to County Attorney Office approval prior to plat approval. *Subdivision Regulations Article 3-2 and OPG recommendation.*
7. All easements for access and utilities shall be shown on the plat. *Subdivision Regulation Article 3-6 and OPG recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 2:50 p.m.

THURSDAY, DECEMBER 2, 1999

The Board of County Commissioners met in regular session; a quorum of members was present. Chair Kennedy was out of the office.

ADMINISTRATIVE MEETING

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

Letter – Acting Chair Carey signed a Letter of Proposal and Acceptance from Dennis Lower of D. Lower Construction Incorporated to Robert Schieder of the Missoula County Detention Center agreeing to build the Detention Center garage for the amount of \$43,421.00.

Letter – The Commissioners signed a letter to Ron Printz of Kahia, Incorporated, a “notice to proceed” with work on the El Mar Estates Wastewater Facility Seepage Collection Trench Improvements as written in the Agreement dated December 2, 1999. The term will be December 3, 1999 through December 18, 1999. One copy was filed with the Clerk and Recorder, and two were returned to HDR Engineering.

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with the City of Missoula (Crime Victims' Advocate Office located in the City Attorney's Office) funded by the Board of Crime Control Grant to provide advocacy services for victims of crime and education/training services regarding crime victims' needs and services. The value of the Agreement is \$8,882.00. The term of the Agreement will be July 1, 1999 through June 30, 2000.

Resolution - The Commissioners signed Resolution No. 99-090, a Budget Amendment for the Office of Planning and Grants – Community Incentive Project with revenue in the amount of \$271,369.77 and expenditures in the amount of \$257,398.11 for FY 2000.

Contract - Commissioner Evans signed a Contract with the Addictive and Mental Disorder Division of the Department of Public Health and Human Services for the Community Incentive Program Grant. The purpose of this Contract is to provide substance abuse prevention activities for youth and parent education classes for high-risk families. Payment shall not exceed \$271,369.77. The term of the Contract is October 1, 1999 through September 30, 2000. The document was returned to Peggy Seel in OPG for further handling.

Contracts – Commissioner Evans signed two Contracts with U.S. West for a video arraignment system at the new Detention Center:

- 1) A Maintenance Agreement for the amount of \$360.43, which will be payable at the first of each year.
- 2) A Purchase Agreement for the amount of \$81,997.30 with a three year extended warranty.

The documents were returned to Mike O'Hara at the Detention Center for further handling.

Agreement - The Commissioners signed an Agreement with Kahia, Incorporated for the El Mar Estates Wastewater Facility Seepage Collection Trench Improvements. Compensation shall be \$9,100.00. The term of the Agreement is provided in the “notice to proceed” as December 3, 1999 through December 18, 1999.

Resolution – The Commissioners signed Resolution No. 99-091 to create rules for users of the Sunset West water system for the safe operation and conservation of limited water rights.

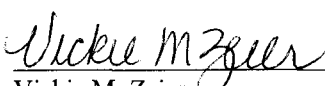
Other items included:

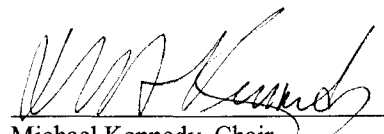
- 1) Board Appointments – The Commissioners made the following Board appointments:
 1. Jack Meyer to a five-year term as a member of the Missoula County Airport Authority. The term will run through December 31, 2004.
 2. Beverly Kiker to a three-year term as a member of the Historical Museum Board. The term will run through December 31, 2002.
 3. Gary McLaughlin to a two-year term as a member of the Missoula County Zoning Board of Adjustment. The term will run through December 31, 3001.
 4. Jerry Ford to a two-year term as a member of the County Zoning Board of Adjustment. The term will run through December 31, 3001

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

FRIDAY, DECEMBER 3, 1999

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


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, DECEMBER 6, 1999

The Board of County Commissioners met in regular session; a quorum of members was present. Chair Kennedy was out of the office recovering from surgery the week of December 6-10.

Claims List -- Commissioners Carey and Evans signed the Claims List, dated December 3, 1999, batch numbers 354, 356 and 357, with a grand total of \$135,477.50. The Claims List was returned to the Accounting Department.

Monthly Report -- Acting Chairman Evans examined, approved and ordered filed the Report of the Clerk of the District Court, Kathleen Breuer, for the month ending November 30, 1999.

Agreement -- The Commissioners signed a Labor Agreement with the Detention Officers' Association of Missoula County recognizing the Union as the exclusive representative of the Detention Officers. Term of the Agreement shall be July 1, 1999 to June 30, 2000. The document was returned to Steve Johnson, Personnel Director, for further handling.

Contract - The Commissioners signed a Contract between Missoula Road Department and 4-G Plumbing and Heating for the installation of a fire alarm system at the Road Department. Compensation will be \$18,542.00. Terms of the Agreement will be December 6, 1999 through February 19, 2000. The document was returned to Doreen Culver, Bidding Officer, for further handling.

Form -- Acting Chairman Evans signed a CTEP Participation Form qualifying the County for the CTEP funds for the year 2000. The fiscal impact will be 13.43% of cost of projects. The form was returned to Horace Brown, County Surveyor, for further handling.

Extension -- At a departmental meeting with the Office of Planning and Grants, the Commissioners approved an Extension of the final plan approval deadline (in accordance with the recommendation of the Office of Planning and Grants) for New Castle Court Subdivision for Lease or Rent with a letter to Tim Wolfe, Territorial Engineering and Surveying, Incorporated. The new deadlines will be December 11, 2000 for Phase I and December 11, 2001 for Phase II.

TUESDAY, DECEMBER 7, 1999

The Board of County Commissioners met in regular session; a quorum of members was present. In the evening, Commissioners Carey and Evans attended the Planning Board Meeting held at City Council Chambers.

ADMINISTRATIVE MEETING

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

Amendment -- The Commissioners signed an Amendment to the Memorandum of Agreement with the Salvation Army. Using this money the Salvation Army will provide one time emergency shelter funds to targeted Missoula families who, due to circumstances caused by Winter weather, would not otherwise be able to maintain shelter. The value shall not exceed \$10,000.00. The term shall be December 1, 1999 through March 31, 2000.

Resolutions -- The Commissioners signed the following Resolutions:

- 1) Resolution No. 99-092, a Budget Amendment for Friends of Historical Museums in the amount of \$2,800.00 for FY00.
- 2) Resolution No. 99-093, a Resolution to abandon the Clearwater Short Line Railroad right of way, from the northwest corner of Tract 1 of COS 2842 to the southeast corner of the N1/2 of the northeast 1/4 of section 35, T12N R22W, along US Hwy 12 West.
- 3) Resolution No. 99-094, a Resolution to abandon a portion of Lower Miller Creek Road by relocation or alteration through the NE1/4 of Section 14, T12N R20W, PMM, Missoula County, Montana under the condition that the old right-of-way is kept contingent upon the construction of the roadway within the new alignment.
- 4) Resolution No. 99-095, a Resolution to abandon a portion of Raser Drive from Old Grant Creek Road to the East boundary of tract 1 COS 4440, contingent upon the dedication of a public or private easement for a future road consisting of 35 feet on the Washington Corporation side and 25 feet on the Missoula County side.

Quitclaim Deed -- The Commissioners signed a Quitclaim Deed to transfer all right, title and interest in the portion of the Clearwater Short Line Railway Company right of way, Parcels I, II and III, from Missoula County to George J. Hale and Joan Hale. Parcel I is Tract 1 of COS 2842; Parcel II is referenced at Book 284 Micro Records page 1034; Parcel III is Tract 2 of COS 2842.

Request for Action -- The Commissioners approved a Request from Family BASICS, a division of WORD, to approve a grant in the amount of \$24,200.00, of which \$20,000.00 will be used for program activities and \$4,000.00 will be available for administration of the program.

Other items included:

- 1) The Commissioners reappointed Garon Smith to a three-year term as a member of the City-County Health Board. The term will run through December 31, 2000.

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

WEDNESDAY, DECEMBER 8, 1999

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

Claims List -- Commissioners Carey and Evans signed two Claims List, both dated December 7, 1999, batch numbers 358, 360, 361, 362, 363, 364 and 365, with a grand total of \$533,550.00; and batch number 359, with a grand total of \$14,638.18. The Claims Lists were returned to the Accounting Department.

Monthly Report -- Acting Chairman Evans examined, approved and ordered filed the Monthly Report for Justice Court 1, John Odlin, for the month ending November 30, 1999.

Amendment -- The Commissioners signed an Amendment made by L & M Construction, LLP, to the Wallace Creek Estates Declaration of Covenants, Conditions and Restrictions and Riparian Resource and No Development Zone Management Plan. The document was returned to L & M Construction for filing.

Letter -- The Commissioners signed a Letter to Jim Morton of the Human Resource Council, supporting the 2000/2001 Community Services Block Grant Work Plan and Budget Programs.

PUBLIC MEETING – December 8, 1999

The Public Meeting was called to order at 1:30 p.m. by Acting Chairman Barbara Evans. Also present were Commissioner Bill Carey, County Surveyor Horace Brown, Chief Civil Attorney Michael Sehestedt and Deputy County Attorney Colleen Dowdall. Commissioner Michael Kennedy was out of the office for the week.

Acting Chairman Evans introduced two young ladies who are part of a "job shadowing" program to observe what local businessmen and women do in their jobs. Jennifer Evans (Acting Chairman Evans granddaughter) and Deana Kam, both seniors at Sentinel High School, were present and observed the public meeting.

Public Comment

None

Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$683,666.46. Acting Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Presentation of Retirement Plaque

Acting Chairman Evans stated this presentation is bittersweet. The Commissioners were going to present a retirement plaque to Captain Mike O'Hara of the Sheriff's Department. The drawing is a pen and ink rendering of the Courthouse by Kevin Parks.

Sheriff Doug Chase made the following speech: "Commissioners, attendee of this meeting, it is bittersweet because we lost somebody who gave his all in regards to getting the new Detention and Corrections facility on line. His health ended up suffering over it. But we have what is, obviously, one of the finest Corrections and Detention facilities in the Northwest and far beyond. This began about five years ago when we, in earnest, began to move forward toward a bond issue for a new facility. Captain Mike O'Hara, with his wealth of knowledge and many talents, was the obvious choice of project manager. Captain O'Hara was then, is now, and until December 31st, and then on to February 29th, is still the Captain of the Detention Facility. We all know we accomplished what few have done, and that was that we passed by nearly 2 to 1, approval of a bond issue. The voters really came out and supported the criminal justice system in Missoula County. It was the largest bond issue in Missoula County's history, as far as I'm able to ascertain. It wasn't without sacrifice, as I mentioned earlier. However, as I and Mike and Judge Odlin and several others went out, we certainly grew tired of the chicken and peas on a nightly basis. Mike brought great talents to the project, not only in planning but as its manager. He was assisted in those efforts by Bob Schieder, Barb Adams, Craig Daymude, Tamara Driscoll, Alan Egge and Jan Dietz of the transition team, but Mike could always be pointed to as the ringleader. His credibility is legion. He has not only answered the thousands of questions posed by the taxpayers but by the County officials. If he didn't have the answer, he immediately researched it, promptly got back to those people with the question. Open house brought thousands of people through our new facility. Over and over, the public passed out accolades, what they liked best about it was its plainness, no Embassy Suite. Over a period of building the jail, so many construction items were caught by Bob and Mike and what we ended up with was a state of the arts facility. Cody, Wyoming, I think best says this. They have visited our facility three times now, they have toured 20 other new correctional facilities in the Western United States. They say none compares to the one that we have and they have been, I think, probably been talking to Captain Mike about coming down and talking to their Commissioners, I suspect. If they haven't, they will be. The bottom line is we have many to thank, but none more than you, Captain Mike. You've given your all to this project, in fact, you've gone beyond and the outcome has literally created in you health problems that you didn't have before. The debt of gratitude we owe Mike is immense. The debt of gratitude we owe his partner in life, Suzy, who has given so much and had to give up so much in order to support her favorite man, is something that we have to thank you for, Suzy, also. So, Mike, if you'll step up here, I believe the Commissioners have a presentation for you. It's bittersweet, as stated by Commissioner Evans."

Commissioner Evans and Commissioner Carey presented the plaque to Captain Mike O'Hara, thanking him for everything he has done for Missoula County.

Captain O'Hara thanked all those who supported the jail bond issue and the staff that kept the old jail together. He especially thanked the transition team for their efforts and all the County employees who made sacrifices throughout the process with the budget held tight.

Hearing: Higgins Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as COS No. 305 in the NW 1/4 of the SW 1/4 of Section 24, Township 15 North, Range 20 West. This parcel is located on the Flathead Indian Reservation and was reviewed by the Salish and Kootenai Tribes.

Stephen Higgins has submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 10 acres in size located on Candlewick Lane off Highway 93 North. Mr. Higgins proposes to create two approximately 5-acre parcels for transfer to his son, Stephen Lane Higgins and daughter, Jamie E. Higgins Jordan. The parcel was deeded to Mr. Higgins in 1991.

The history of the parcel is as follows: The parcel was created by the filing of COS 305, prior to 1974.

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

Acting Chairman Evans opened the public hearing.

Steve Higgins, the applicant, stated the information presented was incorrect. The request was to divide one five-acre plot to two 2.5-acre parcels, one each for his son and daughter. He would retain the other 5 acres. His daughter has a disabled child and he wanted to keep them close by to assist them as much as possible, as well as a place for his son to put a mobile home at a later time.

Acting Chairman Evans stated the law on this process gives the Commissioners the responsibility of determining if this is a legitimate transfer or an attempt to evade subdivision review. To make that determination, the applicant needs to be present so the Commissioners can ask questions if necessary.

Steve Higgins stated his main reason to split the property is to have his son and daughter close by and give them as much help as possible.

Colleen Dowdall asked which parcel Mr. Higgins intended to keep for himself?

Steve Higgins stated the parcel next to the highway was the one he intended to keep for himself.

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

Commissioner Carey moved that the Board of County Commissioners approve the request by Stephen Higgins to create three new parcels by use of the family transfer exemption, based on the fact that there does not appear to be an attempt to evade subdivision review. Acting Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Hearing: Messina Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel and do a boundary relocation for those parcels described in Vol. 101 Micro, Page 1452 and COS No. 97, in Section 6, Township 13 North, Range 16 West.

Thomas Messina, Leonard and Teresa Conley and Velda Conley have submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act and to relocate a common boundary. Currently, two parcels of approximately 10 acres and 32 acres in size located near Potomac off Messina Road are owned by the following:

10 acres owned solely by Leonard and Teresa Conley.

32 acres owned jointly by Thomas and Sandra Messina, Velda Conley and Leonard and Teresa Conley.

There are three houses on the two parcels. The parties propose to create an additional parcel and relocate a common boundary so that there will be three 14-acre parcels. The family transfer would be from Velda Conley to her daughter and son-in-law, Thomas and Sandra Messina.

Both parcels were created prior to 1974 and so were not subject to the Montana Subdivision and Platting Act. All of the land was acquired in 1977 by this family.

According to the records kept by the Missoula County Surveyor, none of these applicants has used the exemptions to the Subdivision and Platting Act.

Acting Chairman Evans opened the public hearing.

John Kellogg, representing the Messinas, was present. He stated the Messinas live in Michigan in the winter and Leonard and Teresa Conley live in Georgia in the winter. The land is only occupied in the summer. That is the reason they were not present at today's meeting. Colleen Dowdall had covered this request quite well. The goal of this request, since each family has shared in the purchase of the property and the creation of a road and water system, is to evenly divide their interest in the property.

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

Commissioner Carey moved that the Board of County Commissioners approve the request by Thomas Messina, Leonard and Teresa Conley and Velda Conley to relocate a common boundary and to create a new parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Acting Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Consideration: Ibey Nursery (1 lot Subdivision – 6.33 Acres) – Butler Creek Road

Nancy Heil, Office of Planning and Grants, stated that her voice was failing so Karen McElroy would read the staff report on her behalf.

Tim Ibey and Chuck Ibey, represented by Eli & Associates, are requesting approval of a 1-lot subdivision that splits a 6.33-acre lot from a 1,600-acre parcel. The property is part of the Hanson Ranch, located off Butler Creek Road adjacent and to the north of Interstate 90. The property is unzoned.

The 1996 Butler Creek Comprehensive Plan recommends residential land use at a density of one dwelling unit per 5 to 10 acres. The Ibeys are proposing to locate their landscaping nursery and irrigation business on the property. The proposed uses for the lot include a combination of commercial, residential and agricultural. The subdivision application includes a site plan which shows plans for three greenhouses, storage building, retail nursery store and caretaker's house. The property would also be used for the storage of vehicles and equipment used in the irrigation and landscaping business.

In regards to Comprehensive Plan compliance, the subdivision review process focuses primarily on the division of land and allows only a limited inquiry into the use of the land. When a building permit is sought, a proposed use is evaluated with respect to Comprehensive Plan compliance if the property is unzoned. Commercial activities north of I-90 are not contemplated in the Butler Creek Plan. Residential and agricultural uses could be found in compliance with the Comprehensive Plan and would include the caretaker's residence, nursery, storage buildings accessory to the agricultural use and a retail store selling product grown on site. Uses that would be considered commercial include the sale of products not grown on site and storage of landscaping and irrigation equipment used off site.

Staff has determined that the division of land could be found in compliance with the Comprehensive Plan if use is not the primary consideration. However, a building permit for commercial use would not be issued based on failure to comply with the Comprehensive Plan.

Portions of the new lot are located within the Zone A 100 Year Floodplain of Butler Creek. The Zone A Floodplain is mapped with approximate boundaries and no flood elevations. Field conditions can often vary widely from what is depicted in Zone A. The property may be subject to ponding behind the I-90 culvert or sheet flooding from upstream sources. The Floodplain Administrator has recommended a flood study for the site, which is part of Condition 8.

The property is accessed via Butler Creek Road which is a paved County maintained road, 22 to 24 feet wide within a 60-foot right-of-way. The southern section of the road north of I-90 is located within a 110 foot wide State right-of-way. The applicant does not propose improvements to Butler Creek Road. Condition 1 requires an RSID waiver for improvements to Butler Creek Road. Access to the new lot will be provided by Two Creeks Road. Two Creeks Road is currently an 18-foot gravel road that serves Mickelson Rock Products gravel quarry which is located on the remainder. The applicant proposes to provide a 60-foot right-of-way and to pave Two Creeks Road to a 24-foot width to the entrance of the new lot. The road currently crosses Butler Creek via a 48-inch culvert. No changes to the culvert are proposed. Horace Brown, the County Surveyor, stated that Two Creeks Road is not an acceptable name and Condition 4 requires that the name be changed.

Engineering plans and drainage plans will be reviewed by the Surveyor's Office prior to plat filing. An approach permit will be required for the new road approach. The applicant has requested variances from commercial road standards. Staff is assessing road requirements based on uses permitted by the Comprehensive Plan. Staff is recommending approval of two variance requests, one for road width of Butler Creek Road and the second for pedestrian walkways.

The applicant proposes to serve the lot with an existing well. A Mountain Water main runs along Butler Creek Road to the Goodan Lane intersection, 400 feet south of Two Creeks Road. The main continues adjacent to the proposed subdivision but is currently closed by a valve at the Goodan Lane intersection. Mountain Water Company stated that it would provide service to the development.

An individual septic system is proposed for the new lot. Tom Barger of the Missoula City-County Health Department stated that there is very little topographic relief from Butler Creek and the area is heavily irrigated. A potential for high ground water exists which will need to be addressed during sanitation and subdivision review.

Bob Henderson of the Montana Department of Fish, Wildlife and Parks suggested measures to minimize the potential for attracting nuisance wildlife, most likely whitetail deer and black bear, to the property. He recommends fencing 7 to 8 feet high and eliminating attractants such as garbage or fruits. The applicant has proposed a 6-foot fence, not including concertina wire, for the property. Staff strongly discourages the use of concertina wire in wildlife areas. Condition 10 requires a development covenant that includes recommendations on minimizing human/wildlife impacts.

Some riparian habitat exists along Butler Creek through the new lot. A riparian management plan has been provided for the site in the application packet and Condition 9 recommends some additions to the plan. Currently, irrigation materials are being stored up to the creek bank and staff recommends that the plan state that no material should be stored in the riparian area. Native plants are not subject to the same maintenance requirements as landscaped plants. Staff recommends that maintenance, pruning and other clearing of riparian area be minimal so that natural habitat can be provided. This may be in contrast to landscaping practices used on the planting in the remainder of the property. Invasive, exotic plants should not be planted in close proximity to the riparian area to minimize potential spread into native habitat, which is part of Condition 9. Condition 9 also requires that the riparian management plan be included in a development covenant.

A portion of the new lot is located within the Airport Influence Area. Conditions 13 and 14 address Airport Influence Area requirements. A 100kV-power line runs across the property parallel to I-90. Condition 13 requires that this easement be shown as 100 feet on the plat. There are revised findings based on corrected information received from Montana Power Company.

Staff is recommending approval of both variances. Staff is recommending approval of the subdivision with the 13 conditions noted in the staff report.

Nancy Heil stated there were revised findings related to the Montana Power Line, it is a factual correction based on information received from the power company. There is a request from the Attorney's Office to modify the second sentence of Condition 8 so that it doesn't imply that the County is requesting the Health Department to do tests that it would not normally do. Colleen Dowdall can expand further on this request.

Colleen Dowdall stated Marnie McClain, Deputy County Attorney, felt the wording for Condition 8 could be improved to make it clear that the County was not creating a duty in the Health Department to conduct, or even decide for purposes of whether basement should be installed, when high ground water testing should occur. The second sentence of Condition 8 has been reworded, as well as the finding of fact. If the Commissioners choose to make that change, it should be included in their motion.

Acting Chairman Evans asked for public comments.

Ron Ewart, Eli & Associates, developer's representative was present, as was Tim Ibey. He stated that Mr. Ibey and Paul Hanson have worked out a potential agreement for Tim Ibey and Chuck Ibey, doing business as Ibey Nursery and Landscaping, to purchase 6.33 acres from the Hanson Ranch. The Hanson Ranch, approximately 1,600 acres, was handed down to Paul and Natalie Hanson from Paul Hanson's parents. Paul Hanson's mother still lives on the ranch in a separate house. Mr. Hanson works hard to keep the land in good, weed-free condition. He grows alfalfa and also has cattle. The only other use on this property is the Mickelson rock quarry which generates minimal income. To help farm operational cash flow, Mr. Hanson wants to sell this 6.33 acres. The portion Mr. Hanson wishes to sell to Ibey Nursery is in the far southeast corner of the 1,600-acre ranch. It is next to Butler Creek Road and I-90. There are two power lines that run on or through the property, making it problematic for farm and ranch purposes. Mr. Hanson figured this would be the best place to sell off a small piece of the ranch. It also serves the Ibeys well with good access to Butler Creek Road. Ibey Nursery does work throughout Missoula and would like a home base similar to what Caras Nursery has done. This location would also be a showcase for the type of landscaping that the Ibeys could provide. At a neighborhood meeting in September, there were no negative comments from neighbors. The main comment from the people at Goodan-Kiel was the sight distance at Butler Creek Road. Utilities are available for phone, power, etc., as are community services. A conceptual site plan is included with the packet showing what the Ibeys intend to do. It will be an attractive, landscaped area visible from I-90. Quality design standards have been proposed that have to do with land use, such as site design, landscaping, weed control, lighting, outdoor storage, hours of operation, signage, no build zone, etc. These would be included in the covenants and development agreement. OPG has looked at this proposal primarily from the subdivision of land. The packet goes into some detail about use and the issue of Comprehensive Plan compliance. He sincerely felt this proposal meets the Comprehensive Plan. A denial of the Comprehensive Plan compliance permit application has been received. An appeal of this denial has been filed. The information included in this packet will be used during that appeal process. Regarding the conditions of approval, he wanted to speak about two of them and Mr. Ibey would speak about Condition 1. Condition 5 has to do with an RSID waiver for public sewer and water systems and that the subdivision shall be connected within 180 days of availability. This is standard language used on most subdivision, but in this particular case, Mr. Ibey had a problem with that wording. This property is outside the Missoula Wastewater Treatment area. The connection statement in Condition 5 is already required by the Health Department for properties within the Wastewater Treatment area. The letter received from the Health Department does not have a requirement for this type of language. The Health Department regulations have a requirement for hook-up in the event of septic system failure. They feel Condition 5 is not necessary as it is already included in Health Department regulations. He also wanted to talk about Condition 8. Butler Creek does run through the far eastern portion of this property. They would like to propose a change to the first sentence to state that any structures within 100 feet of the FEMA designated floodplain shall be flood elevated a minimum of one foot. The reason for the request has to do with the floodplain study that was done. The floodplain study only dealt with the area from I-90 to Highway 200. One of the problems identified was the culvert that takes Butler Creek under the highway is partially filled with sediment. His interpretation of the conclusion of the report was that any structures built within the floodplain area should be flood elevated one foot. They were asking for consistency with the report. He spoke with Clint Brown of Water Consulting who conveyed that if the culvert were cleaned, then the floodplain boundaries as designed should be approximately correct. He felt the possibility of cleaning the culvert should be looked at, and whose responsibility it would be for such cleaning. He requested Condition 8 be changed as he stated earlier and perhaps some language be added regarding the cleaning of culvert. To do a 100-year floodplain study would be an expensive and drawn out process. They are in agreement with the remainder of the conditions, except for Condition 5 and Condition 8 as he talked about, and Condition 1, which Mr. Ibey would address. A more detailed discussion of the use issue will take place at the Comprehensive Plan appeal meeting.

Tim Ibey stated he was co-owner with his brother Chuck of Ibey Sprinklers and Landscape. They are both native Missoulians. The business was started in 1990 with their father. The business employs approximately 35 people during the peak season and about 6 or 7 people in the winter. They need to move on with their business so they can compete with other established nurseries in town. He and Mr. Hanson concluded this was a nice area for a landscape and nursery business. With the high-tension power lines it would not be good for residential use. The proposal presented will showcase their work and allow them to produce and maintain landscaped areas next to Butler Creek that the public can look at and walk through to give them an idea of what Ibey Nursery can do. The pipe stored next to the riparian area will be moved. He had a problem with Condition 1 and the waiver of the right to protest an RSID/SID for Butler Creek Road. Being an American, he did not like to lose his say on anything. It is not that he would not want the improvements, but he would like to have a say in what kind of improvements would be made. He is not opposed to paving and bike paths, etc., but he would like to have a say in the matter, to retain his voice in the democratic process. Regarding the public sewer and water systems, he did not want to cross the creek with a big ditch to put those systems in. This is in keeping with the appearance of the riparian area. He felt his business would not have an abundance of wastewater or need water in excess of what the small well could provide. Not installing these systems would lessen the impact to the riparian area. The septic and well will be far enough from Butler Creek to be out of the floodplain. The caretaker's residence would be approximately 600 feet from the existing services, causing the connection of services to be a very large undertaking. His business has been built slowly and debt free, while maintaining high quality. Expending a large amount of money for water and sewer could affect their plans for this proposal.

Acting Chairman Evans asked if her understanding was correct, that they wanted to remove from Condition 5, "The lot owner shall connect to public sewer within 180 days of when the public sewer main is available to the subdivision." That would be covered in Health Department regulations. She asked Nancy Heil if that was correct?

Nancy Heil stated this area is included in the 1999 Sewer Service Area map.

Acting Chairman Evans stated it was not necessary for the rules to be duplicated.

Colleen Dowdall stated the regulations require that if the property is within the sewer service area, a statement be put on the plat stating agreement to connect to public sewer within 180 days after public sewer mains are installed and available. The condition has evolved over time. She agreed there was no need to duplicate rules.

Acting Chairman Evans asked about having to hook up to sewer within 180 days of septic failure?

Colleen Dowdall stated these were Health Department regulations and could not be changed with regard to the time limit of sewer hook up or septic failure.

Tim Ibey asked if there was any mention of distance from the sewer main.

Colleen Dowdall stated there was no mention of distance in this particular section of regulations.

Nancy Heil stated she recalled there is language in somebody's rules about a requirement that has to do with the number of feet from a property line and the number of feet from a new structure. She did not have exact facts and figures. The health rule regarding water is that a new well cannot be installed if it is within 200 feet of a water main.

Colleen Dowdall stated there is a section in the rules that says a new or replacement septic permit would not be issued if public sewer abuts the property and is within 200 feet of the structure served or is within 200 feet of any part of the subsurface disposal system. There is also a state regulation if a subdivision is contiguous to or within 500 feet of a department approved public water or sewage system, etc., etc.

Nancy Heil added there is a subdivision regulation that allows the requirement for an RSID waiver for public water systems that has to do with the provision of firefighting water, as noted in Condition 5.

Tim Ibey stated he hoped an agreement could be reached so Ibey Sprinklers and Landscape could be able to serve the public from this area. He was looking forward to having such a showplace.

Paul Hanson stated he was the landowner for this proposed subdivision. He felt this was a great idea and a good location for the nursery business. That piece of property has two strikes against it for residential purposes, the high-tension power lines and the proximity to the Interstate. He has lived there all his life and has never seen water, except for flood irrigation water, run on this piece of land. He supported Tim Ibey in this proposal.

Commissioner Carey stated Ron Ewart suggested relying on the FEMA designated floodplain in Condition 8. The County Floodplain Administrator has told the Commissioners that FEMA designation is worse than meaningless, and could have negative impacts if the floodplain study was not conducted.

Ron Ewart stated the Water Consulting report said the problem was with the culvert and being about half full of sediment. If there were a 100-year flood with too much water for Butler Creek, it would probably create sheet flooding. The valley is fairly wide in this location and water would spread out to a specific depth, probably fairly shallow. Water Consulting didn't feel that depth would be more than about one foot, both north and south of the highway, especially if a way could be developed to have the culvert cleaned. He believed if the culvert were cleaned out the FEMA designation would be correct.

Commissioner Carey stated the Floodplain Administrator said even if the culvert were cleaned out, given it is lower than the water level, it would immediately fill up again. There is a difference of opinion as to what the water would do and where it would do it. He was inclined to have the floodplain study done so the answer will be known for sure. The County has a recent history of liability exposure due to flooding.

Ron Ewart stated he felt this situation was not comparable to the Mullan Trail situation. Mr. Ibey needs to get his equipment and vehicles under cover as soon as possible. The building of the retail store wouldn't take place for some time. Mr. Ibey did not want to get deadlocked by having to do the floodplain study and not be able to do anything else. The floodplain study will take some time. He hoped the County would consider cleaning the culvert.

Acting Chairman Evans stated mention has been made of the Mullan Trail mess. When that was approved, the Commissioners were unaware of any problems and it cost the County several hundreds of thousands of dollars. Much of that approval was based on the FEMA designation. This area may not have ever experienced any problems in the past, but the potential was there. She wanted the County protected on this proposal, either with a flood study or a waiver of liability from the developer.

Colleen Dowdall stated that wouldn't be acceptable in this case. This isn't just to protect the County from liability but also the protection of public infrastructure. Brian Maiorano, the Floodplain Administrator, is insistent the floodplain study be done for this property.

Tim Ibey asked barring this subdivision even gets done, would there still be a flood problem.

Colleen Dowdall stated Brian Maiorano said he would still require some kind of study be done even for a building permit.

Tim Ibey stated Paul Hanson has lived there for 40 years and has never seen a flood except when it was flood irrigated. He did not understand the problem, the building was to be done on high ground outside the flood area. Doing the study did not fix the potential flood problem.

Acting Chairman Evans stated the Commissioners were faced with the problem of being fair to Mr. Ibey and at the same time, protecting the public interest, including the public treasury. Having just paid out a substantial amount of money for

something that the County did not believe was a problem, they did not want to be in that situation again. With two creeks on the property, there was the potential of flooding. The floodplain administrator said the study did not have to be extremely extensive and he would be willing to work with whomever was conducting the study. She wanted to find some way to help Mr. Ibey without harming the public interest.

Commissioner Carey stated it was important to note that the Floodplain Administrator was willing to work with whomever does the study. His responsibility to the Commissioners was to offer the best advice possible and if it is not followed, it leaves the County in a very vulnerable position. In his view, the flood study is required, but the County is willing to work with the applicant to expedite the study. The cost was estimated at about \$4,000 or \$5,000 at the most.

Tim Ibey said \$4,000 or \$5,000 is a lot of money.

Acting Chairman Evans stated the FEMA designations are approximate at best and mostly not correct. She also asked Horace Brown why the name Two Creeks Road was not acceptable?

Horace Brown stated there was another road with a very similar name, Twin Creeks Road. The names are too similar and could confuse personnel in the event of an emergency.

Acting Chairman Evans asked counsel what the effect would be of deleting the second sentence in Condition 5? That requirement is already in the Health Department regulations and deleting it from the condition would not matter.

Colleen Dowdall stated that was correct.

Commissioner Carey asked what purpose was served by leaving it out?

Colleen Dowdall stated the Health Department in effect requires the same thing in their regulations, however, it is worded differently than what appears in Condition 5. Since this proposal is in the Wastewater Treatment Service Area, it would be better if that sentence was deleted. The Health Department will require that statement to be on the plat.

Commissioner Carey moved that the Board of County Commissioners delete the second sentence of Condition 5 which reads: "The lot owner shall connect to public sewer within 180 days of when the public sewer main is available to the subdivision," as it is already part of the City-County Health Department regulations. Acting Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Acting Chairman Evans asked Mr. Ibey and Mr. Hanson if they had seen the possible modifications to Condition 1 regarding the RSIDs? She told Mr. Ibey, concerning the waiver of the right to protest an RSID, nothing ever kept him from having his say. There is always a hearing on an RSID and he could come and say what he thought. He always has the right to his say but he did not have the right to protest, which could stop the RSID.

Tim Ibey stated that if everybody has waived the right to protest, an RSID, which may not be a good idea, could be automatically created.

Acting Chairman Evans stated that was correct.

Colleen Dowdall added that was true, within reason. State law requires that an individual be assessed, based on benefit. There are different ways to determine benefit. He would not be assessed the same as a subdivision that had a far greater use or far greater frontage, or whatever the basis of the assessment turns out to be. Condition 1 is also a fairly broad statement. He could testify about the level of improvements which would affect the cost. He could not protest being included in the area for the improvement of the roadway. The County is saying this is a road that needs to be paved or improved or sidewalks put in and the subdivision regulations talk about that being done now. However, it would not be fair to make Mr. Ibey do all of it, when the use is by a number of people. If he waives the right to protest and RSID in the future, when a group of people can be included to finance the project, then the County will have his participation and the improvement can be done.

Tim Ibey stated he had another experience with the RSID process and it was a bad one. It involved some mini storage units on Montana Street. It was originally in the County and then was annexed. They were then presented a bill for \$22,000. The street was torn up, sewer was put in, the street was repaved. The street was torn up, water was put in, the street was repaved. Nothing else has been done, except for a small portion of sidewalk at the far end of the property where he has never seen anyone walk.

Colleen Dowdall stated that was different than what the County can do. The County does not have the same powers as the City. The City can just tell the individual they are putting in sidewalks and will send the bill. The County cannot do that.

Tim Ibey stated that was his experience with the process and why he was so hesitant about giving up his say.

Acting Chairman Evans asked Horace Brown if Butler Creek Road was paved?

Horace Brown stated it was paved with millings and will be chip sealed next year. This was done with County money and property owners in the area were not charged for it.

Acting Chairman Evans stated the Floodplain Administrator said the road may need to be sandbagged if flooding was eminent. She asked Horace Brown if Butler Creek Road could be washed out during a flood?

Horace Brown stated the road is higher than the field, it would act as a dam. It would take a lot of fast moving water to wash the road out.

Acting Chairman Evans stated she had looked at the potential layout for the Ibey Nursery and thought it was beautiful. It would make a beautiful entrance to the city from the Interstate.

Nancy Heil stated there was a suggestion to modify the second sentence of Condition 8 regarding the flood study showing evidence of sheet flooding or high ground water. She wondered if that should be deleted, given the confusion on the issue. The issue was at what point does the County become worried about whether or not basements are appropriate. Clearly if this is in an area where there is a flood zone or flooding, that is one circumstance. Staff also wrestled with what happens if there is high ground water testing required by the Health Department for septic and that testing indicates that there is high ground water in the area. Would that also be evidence enough to suggest there not be basements. There seemed to be a question about the ambiguity of the statement.

Colleen Dowdall stated she provided the new language, but in subsequent communications, the effectiveness of the language regarding ground water testing was questioned. She felt that Condition 8 could be modified by removing the entire second sentence, regarding the installation of basements.

Acting Chairman Evans asked Mr. Ibey if he planned to put a basement in the caretaker's house?

Tim Ibey stated he had not planned that far ahead.

Commissioner Carey asked if by being more specific, wasn't the County protecting itself more?

Colleen Dowdall stated this may actually be creating a responsibility where none should be and would put the Health Department in an unenforceable position. Until this can be looked at further, it would be best to delete the entire sentence.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision; and approve the variance request from Article 3-2(3) of the Missoula County Subdivision Regulations for Butler Creek Road to vary from the required 24 foot width to the existing 22-24 foot width, both based on the findings of fact set forth in the staff report. Acting Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey moved that the Board of County Commissioners approve Ibey Nursery Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report, with the following changes: That Condition 1 be modified to also include "flood management infrastructure and drainage improvements;" that the second sentence of Condition 8 be deleted, and that Criterion 5 Findings of Fact #7 and #11 and Conclusions of Law #4 be modified as noted in the memos provided by staff. Acting Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Acting Chairman Evans stated for the record that Brian Maiorano, the Floodplain Administrator, would work with whomever does the flood study to keep it at the most minimal basis possible to achieve the results desired. She wished Mr. Ibey good luck in his business and thought it would be an asset to the area.

Ron Ewart stated Mr. Ibey has plans for an equipment storage building ready. Could he get a permit to build just this storage building to get his equipment out of the elements?

Colleen Dowdall stated that could not be answered in this forum. An appeal has been filed to the Comprehensive Plan denial and the Commissioners could not be involved in that discussion at this point. If this requires a building permit, he would need to apply for that permit.

There were no further public comments.

Ibey Nursery Summary Subdivision Conditions of Approval:

1. The following statement shall appear on the face of the plat and in each instrument of conveyance:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for improvements to Butler Creek Road, including installation of pedestrian walkways, sidewalks, or bikeways, flood management infrastructure and drainage improvements, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land." *Subdivision Regulations Article 3-2 and staff recommendation.*

2. The name of Two Creeks Road shall be changed to a name acceptable to the County Surveyor's Office prior to plat filing. Engineering plans for the roadway and drainage improvements shall be approved by the County Surveyor prior to plat filing. A turnaround shall be approved by the Missoula Rural Fire District and County Surveyor prior to plat filing. Grading, drainage and erosion control plans shall be approved by the County Surveyor prior to plat filing. *Subdivision Regulations Article 3-4(2) and County Surveyor recommendation.*
3. A maintenance agreement for Two Creeks Road shall be approved by the County Attorney's Office prior to plat filing. *Subdivision Regulations Article 3-2(1)(1) and staff recommendation.*
4. The applicant shall file a development agreement, subject to County Attorney approval, that states that driveways in excess of 150 feet in length shall have approved turnaround for fire apparatus, a minimum unobstructed width of not less than 20 feet and an unobstructed vertical clearance of 13 feet 6 inches. The driveway design and turnaround shall be approved by the Missoula Rural Fire District and County Surveyor prior to plat filing. *Subdivision Regulations Article 3-2(6) and staff recommendation.*

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

"Acceptance of a deed for a lot within this subdivision constitutes a waiver of the right to protest a future RSID/SID for public sewer and water systems, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land." *Subdivision Regulations Articles 3-1(1)(D), 3-7(2) and staff recommendation.*

6. A Revegetation Plan for Disturbed Sites shall be approved by the Missoula County Weed Board prior to plat filing. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*
7. The developer shall contribute \$100.00 per new lot to the Missoula Rural Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants at the time of plat filing. *Subdivision Regulations Article 3-7(2) and Missoula Rural Fire District recommendation.*
8. The applicant shall delineate actual 100 year floodplain boundaries on the plat subject to Floodplain Administrator approval, based on a flood study that accounts for ponding caused by the culvert under Interstate 90 and water sheeting onto the property from upstream sources. *Subdivision Regulations Article 3-1(1)(B), 3-1(2) and Floodplain Administrator recommendation.*
9. The riparian management plan shall be amended to state that no materials shall be stored in the riparian area.. Maintenance, pruning and other clearing in the riparian area shall be minimal so that natural habitat can be provided. This may be in contrast to landscaping practices used on the plantings on the remainder of the property. Invasive, exotic plants shall not be planted in close proximity to the riparian area, to minimize potential spread into native habitat. The plan shall be included in a development covenant to be approved by the Office of Planning and Grants and the County Attorney's Office and filed prior to plat filing. *Subdivision Regulations Article 3-13 and staff recommendation.*
10. The development covenant shall include measures to minimize human-wildlife conflicts, such as those in the "Living with Wildlife" brochure, subject to the Office of Planning and Grants approval prior to plat filing. *Subdivision Regulations Article 4-1(12) and staff recommendation.*
11. An avigation easement shall be obtained for the property in compliance with the Airport Influence Area Resolution prior to plat filing. *Subdivision Regulations Article 3-1(2) and Airport Authority request.*
12. The following statement shall appear on the face of the plat:

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

The development covenant shall include information about airport noise subject to Airport Authority approval prior to plat filing. *Subdivision Regulations Article 3-1(2), 4-1(12) and Airport Authority request.*
13. The utility easement shown for the Montana Power Company line running along Interstate 90 shall be shown as 100 feet wide on the plat, subject to Montana Power Company approval. *Subdivision Regulations Article 3-6 and staff recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 3:00 p.m.

THURSDAY, DECEMBER 9, 1999

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

Budget Transfer – The Commissioners signed a Budget Transfer for the Department of Youth Drug Court in the amount of \$33,480.00 for FY00.

Payroll Transmittal – The Commissioners signed a Payroll Transmittal for Pay Period 23, Pay Date November 19, 1999, for the amount of \$732,196.91. The document was returned to the Auditor's Office.

ADMINISTRATIVE MEETING

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

Professional Agreement – The Commissioners signed a Professional Agreement between the Office of Planning and Grants and Nelson/Nygaard Consulting Associates for an evaluation of the Missoula Transportation Demand Management (TDM) Program. Term of the Agreement shall be December 15, 1999 through June 30, 2000. The amount shall not exceed \$35,978.00.

Contract – The Commissioners signed a Contract between the Office of Planning and Grants and the Montana Department of Transportation for local expenditures of planning funds through the FTA 5303 Program. The term will be October 1, 1999 through September 30, 2000. The total cost will be \$60,390.00.

Amendment – Acting Chairman Evans signed an Amendment to an agreement with Architects Design Group for providing design services for the remodeling of the County Courthouse Annex. The revised cost shall be \$142,240.00. The term shall be December 31, 1998 through December 8, 2000. The Amendment was forwarded to Mike Absalonson at Architects Design Group in Kalispell for signature.

Recertification – Acting Chair Evans signed the Community Rating System Annual Recertification for maintaining all flood insurance policies required as a condition of federal financial assistance under the National Flood Insurance Program. The document was returned to Brian Maiorano in OPG for further handling.

Other items included:

- 1) The Commissioners made the following Board appointments:
 1. Nancy McKiddy to a four-year term as a member of the Missoula Urban Transportation District Board. The term will run through December 31, 2003.

2. Linda Baumann to a two-year term on the Missoula City-County Animal Control Board. The term will run through December 31, 2001.
3. Beverly Young to a three-year term as a member of the Missoula Public Library Board. The term will run through December 31, 2002.
4. Byrl Thompson to a three-year term as a member of the Seeley Lake Waste Management District Board. The term will run through December 31, 2002.
5. E. E. "Buck" Smith to a two-year term as a member of the Missoula County Fair Commission. The term will run through December 31, 2001.
6. Julie A. Gemar to a two-year term as a member of the Missoula County Fair Commission. The term will run through December 31, 2001.
7. Joanna C. Haddon to a two-year term as a member of the Missoula County Fair Commission. The term will run through December 31, 2001.
8. Kim Latrielle to a one-year term as an ad hoc member of the Missoula County Fair Commission. The term will run through December 31, 2000.
9. Charlie Eiseman to a two-year term as an ad hoc member of the Missoula County Fair Commission. The term will run through December 31, 2001.
10. Max G. Bauer, Jr. to a three-year term as a member of the Missoula Aging Services Governing Board. The term will run through December 31, 2002.

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

FRIDAY, DECEMBER 10, 1999

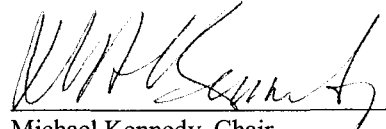
The Board of County Commissioners met in regular session; a quorum of members was present.

Claims List -- Commissioners Carey and Evans signed two Claims List, dated December 9, 1999, batch numbers 355, 370, 371 and 372, with a grand total of \$165,456; and dated December 10, 1999, batch number 373, with a grand total of \$8,385.92. The Claims Lists were returned to the Accounting Department.

Correction Quitclaim Deed -- The Commissioners signed a Correction Quitclaim Deed to transfer all right, title and interest in the portion of the Clearwater Short Line Railway Company right of way, adding Parcel IV(those portions of the NW1/4SW1/4SE1/4 and the SE1/4SW1/4SE1/4, Section 26 T12N S22W, PMM, Missoula County, to the Deed from Missoula County to George J. Hale and Joan Hale.

Verification Form -- Acting Chair Evans signed a Verification Form pertaining to the FY00 elected officials' raise for audit purposes. The percentage change in salaries was 1.68% between FY99 and FY00. The document was forwarded to MSU Extension Services in Bozeman, Montana.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, DECEMBER 13, 1999

The Board of County Commissioners met in regular session; a quorum of members was present. Chair Kennedy was out of the office the week of December 13-17.

Monthly Report -- Acting Chair Evans examined, approved and ordered filed the Monthly Report for the Report of the Sheriff, Douglas Chase, for the month ending November 30, 1999.

Agreements -- Acting Chair Evans signed two Deeds as follows:

- 1) A Deed Restriction Agreement with Lisa Marie Dudik for the purpose of providing assistance for downpayment, closing costs and mortgage reduction assistance for the property located at 2240 West Sussex Avenue in Missoula. The loan amount is \$4,132.00.
- 2) A Subordinate Deed of Trust with Lisa Marie Dudik, for the property and loan amount listed above, which serves as a uniform security instrument covering real property.

The documents were returned to Jennifer Blumberg in OPG for further handling.

TUESDAY, DECEMBER 14, 1999

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

Claims List -- Commissioners Carey and Evans signed two Claims List, both dated December 14, 1999, batch numbers 374, 377, 378, 379 and 380, with a grand total of \$107,053.00; and batch number 382, with a grand total of \$33,465.22. The Claims Lists were returned to the Accounting Department.

Indemnity Bond -- Acting Chair Evans examined, approved, and ordered filed an Indemnity Bond naming Bruce Griffin as principal for Warrant #219937 issued November 5, 1999 on the Missoula County 7910 Payroll Fund in the amount of \$50.79 now unable to be found.

ADMINISTRATIVE MEETING

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

Memorandum of Agreement -- The Commissioners signed a Memorandum of Agreement with Missoula Youth Homes, part of the Community Incentive Grant, to provide the Reconnecting Youth Curriculum on-site for its residents. The Curriculum will work with at-risk students to develop social and emotional skills that will help them

to better relate to the community and avoid at-risk behaviors associated with drugs and alcohol. The value of the Agreement is \$14,000.00. The term will be October 1, 1999 through September 30, 2000.

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with the YWCA of Missoula to participate in the Missoula County Domestic Violence Program (YWCA Shelter Grant), which is a continuation grant funded from the Child and Family Services Division of DPHHS. The amount shall be \$36,362.00. The term shall be October 1, 1999 through September 30, 2000.

Resolution – The Commissioners signed Resolution No. 99-096, an alteration of a portion of Blue Mountain Road through Knapp and Orendain.

Resolution – The Commissioners signed Resolution No. 99-097 to rezone property described as portions of Section 12 and 13, T12N, R20W, PMM, from “C-RR1 Residential,” “C-RR2 Residential,” “C-A3 Residential” and unzoned lands to “Miller Creek View Addition Planned Unit Development.”

Review of Audit – The Commissioners approved a Review of the Audit of the Office of Clerk and Court compiled by Susan Reed, Auditor. The document was forwarded to Clerk and Recorder for filing.

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

WEDNESDAY, DECEMBER 15, 1999

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

PUBLIC MEETING – December 15, 1999

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Bill Carey. Also present were Commissioner Barbara Evans, Chief Civil Attorney Michael Sehestedt and Deputy County Attorney Colleen Dowdall. Chuck Wright, Land Surveyor, Surveyors Office, attended the meeting for County Surveyor Horace Brown who was out sick. Commissioner Michael Kennedy was out of the office for the week.

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$314,360.29. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Bid Award: Furniture for Office of Planning and Grants

On July 1, 1996, Missoula County entered into “An Interlocal Agreement Between the City of Missoula and the County of Missoula to Cooperate in the Provision of Planning Services and Grants Administration to the Residents of Missoula.” Under the terms of this agreement, “The City shall be responsible for the Missoula Office of Planning and Grants premises and the County shall be responsible for furniture, fixtures, equipment and automobiles.”

Pursuant to this Agreement, the City is remodeling City Hall to accommodate space needs of OPG. Also pursuant to this Agreement, the County let a formal bid, #2011-01, for necessary office furnishings. The bid was opened on Monday, December 13, 1999. Two bids were received: one from Office City in the amount of \$51,551.32; and one from Corporate Express in the amount of \$41,265.54. Upon review of bid documents, it has been determined that the lowest and best bid was offered by Corporate Express.

The Office of Planning and Grants recommends the bid be awarded to Corporate Express for an amount not to exceed \$44,755.03. This amount reflects changes and additions to the original bid.

Cindy Klette, Office of Planning and Grants, stated that when the two bids were reviewed to see if they were comparable, it was discovered both companies were ordering from the same catalog. This proved that the Corporate Express bid was the best and lowest bid. There were a couple of items in the bid document that needed changing. There was an inadvertent omission on the bid document and some upholstery on chairs was changed to match the design plan. OPG is recommending approval of the bid to Corporate Express in the amount of \$44,755.03.

Commissioner Evans asked Cindy Klette how much of their existing furnishing would be reused?

Cindy Klette stated OPG is reusing virtually everything that is still in any kind of usable condition. They did include in this request the replacement of some chairs that are not ergonomic and on the verge of dilapidation but are still somewhat usable. If it was needed to cut back on the cost, this could be an item to delete from the bid. OPG was expecting a bid of approximately \$60,000 making this bid quite reasonable and positive.

Commissioner Evans moved that the Board of County Commissioners approve the award of the bid for office furnishings for the Office of Planning and Grants to Corporate Express in the amount of \$44,755.03, as it was the lowest and best bid. Acting Chair Carey seconded the motion. The motion carried on a bid of 2-0.

Decision: Request to Abandon a Portion of Harlequin Loop – Missoula Development Park

Barbara Martens, Projects Coordinator, presented the staff report.

This is a petition to abandon Harlequin Loop from the southerly right-of-way of Expressway to the northerly boundary of Lot 3, Block 13 of Missoula Development Park Phase 2 located in Section 1, Township 13 North, Range 20 West, Missoula County, Montana.

The reasons for the request are as follows:

1. Reconfiguration and relocation of lot lines.

The public hearing on this matter was held on Wednesday, October 6, 1999. A site inspection was conducted by County Surveyor Horace Brown and Commissioner Bill Carey on Friday, October 22, 1999.

Acting Chair Carey stated he did accompany County Surveyor Horace Brown on this site inspection. They both agreed this petition should be granted.

Commissioner Evans moved that the Board of County Commissioners approve the petition to abandon Harlequin Loop from the southerly right-of-way of Expressway to the northerly boundary of Lot 3, Block 13 of Missoula Development Park Phase 2 located in Section 1, Township 13 North, Range 20 West, Missoula County, Montana. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Hearing (Certificate of Survey): Westre Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Lot 2-B of COS 4670.

Jack Westre has submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 10 acres in size located on Ruple Lane off Moccasin Lane. Mr. Westre proposes to divide the tract into two parcels, each approximately five acres in size. He will transfer one parcel to his daughter, Dawn Kanduch.

The history of the parcel is as follows: COS 1595 – 20 acre parcel created by exemption from subdivision. COS 4670 – 10 acre parcel created by family transfer exemption in 1996.

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

Jack Westre was present and came forward to answer any questions the Commissioners might have.

Acting Chair Carey stated that this process was an exemption to the Montana Subdivision and Platting Act, it was a family transfer with no intention of creating a subdivision. The Commissioners' duty was to determine if this was an attempt to evade subdivision review. There were no questions for Mr. Westre.

Commissioner Evans moved that the Board of County Commissioners approve the request by Jack Westre to create a new parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Consideration: Otto's Acres (4 lot Subdivision) – South Third Street West – Continued from December 1, 1999

Nancy Heil, Office of Planning and Grants, presented an review and update of the staff report.

This is a continuation of the consideration from December 1, 1999. At that time there was some discussion regarding the conditional public easement that would run through the property. The applicant has requested changes to recommended Conditions 1 and 3. The applicant has also requested a change to the alignment of the road easement through the property so that the easement on the southern portion of the property would be shared by newly created Lots 3 and 4. Staff discussed these changes with the Commissioners at their Planning Status meeting, resulting in revised motions and conditions to consider. Staff supports the movement of the easement location to be shared by both Lots 3 and 4, so there would be an amended motion that the Commissioners approve the summary subdivision with the revised easement location as described in the applicant's letter. There are also three revised conditions mostly addressing the conditional easement and the name of that easement, which are Conditions 2, 3 and 6.

Acting Chair Carey asked for public comments.

Ron Ewart, Eli & Associates, developer's representative, was present. He stated the intent behind this subdivision was to leave Lot 3 as a 3-acre tract so it could remain semi-rural and private. In his position, he looks at the landowner's goals as well as the big picture of community development, which was the purpose of the no build zone. He felt the no build zone was a good way to preserve the possibility of a future road connection. Currently, both Lots 3 and 4 are for sale. Mr. Ammons did have a potential buyer for both lots, but that person withdrew their offer due to the problems associated with the conditions. The revised conditions presented today are acceptable. On Condition 3, they would like a minor change that says that at such time that it is needed "to serve future subdivision on Lot 3 or Lot 4 and the parcels to the south." The reason for that change is they feel no one would want to buy Lot 3 if it is known that if someone to the south subdivides it will become an easement, unless the purchaser of Lot 3 is a developer who wants to divide it into three parcels. If someone wants to buy Lot 3 and maintain the three acres as a small ranch, they would have a problem with the easement. They would like to see the language changed if possible. Another change discussed was deleting the mention of improvements to Red Stables Lane in the RSID waiver. It would be acceptable as long as it is on record that the owners of those lots would not be responsible for actually extending the roadway because of the bridge that would be needed over the irrigation ditch. That is mentioned in another condition. Deleting mention of Red Stables Lane in the RSID waiver would make it more clear that the lot owners are not responsible for extending the road. The easement has been moved to center it between Lots 3 and 4 so it would come out centered between lots to the south.

Commissioner Evans stated that the wording regarding Red Stables Lane read: "The lot owners and future owners of lots in Otto's Acres will not be responsible for the construction of the future roadway if construction of the future roadway is attributable to division of land to the south." That would seem to take care of his concern.

Ron Ewart stated that was correct if the conditions are recalled at a later date. The RSID waiver will be on the plat and may cause confusion unless more research is done into the conditions.

Commissioner Evans stated this was a difficult subdivision and staff has worked hard to come up with fair solutions to most concerns. She would support staff's revised recommendations.

Nancy Heil stated the wording of future roadway construction in Condition 3 will also appear on the plat, if that would answer Ron Ewart's concerns.

Ron Ewart stated another possibility that had been discussed was a cash donation for the sidewalk that would go directly to the County so the money could be used as they see fit at the time South Third Street West is widened. Currently, the County would have to provide plans for the roadway so sidewalks could be designed to mesh with the roadway. Those plans may not be available for some time.

Commissioner Evans stated that she did not want a sidewalk required that might be torn out later when the road was widened, which could happen if sidewalks are required now. She did not know, however, how to figure what dollar figure to use for such a contribution.

Ron Ewart stated he proposed \$1 per square foot. That figure would cover the cost of sidewalks in most all cases.

Acting Chair Carey asked where the money would go so it would be available at the time sidewalks are being constructed?

Colleen Dowdall stated the money could be set up in a fund of some kind for this purpose or it could go to the Road Department's budget for sidewalks. If the condition is placed on this subdivision, the logistics can be worked out prior to payment.

Commissioner Evans asked Chuck Wright if that was satisfactory and if they would verify the amount of square footage for the \$1 per square foot contribution.

Chuck Wright stated the plans would be reviewed and the square footage would be verified to determine the dollar amount.

Nancy Heil stated if that was acceptable to the Surveyor's Office, it seems to make sense to OPG.

Acting Chair Carey asked if this could be made conditional upon approval by the Surveyor's Office?

Chuck Wright stated he felt Horace Brown would be agreeable to this contribution approach.

Acting Chair Carey stated this would be conditional on approval by the County Surveyor with the contribution at \$1 per square foot.

Colleen Dowdall stated the Commissioners needed to approve the variance request. If the subdivision doesn't have to put in sidewalks but has to make a cash contribution, that would need to be a condition of subdivision approval.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision, conditioned upon a cash contribution of \$1 per square foot of sidewalk required, based on the findings of fact set forth in the staff report; and approve Otto's Acres Subdivision with the revised easement location in the applicant's December 13, 1999 letter, based on the findings of fact in the staff report and subject to the conditions in the staff report, including revised Conditions 2, 3 and 6, and modifications to Condition 5 that state a \$1 per square foot cash in lieu of sidewalks contribution shall be made prior to plat filing. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Otto's Acres Subdivision Conditions of Approval:

1. The following statement shall appear on the face of the plat and in each instrument of conveyance:

"Acceptance of a deed for a lot within this subdivision shall constitute the assent of the lot owner to waive the right to protest a future RSID/SID for improvements to South Third Street West and Red Stables Lane, including installation of pedestrian walkways or bikeways, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land depicted herein." *Subdivision Regulations Article 3-2 and staff recommendation.*

2. The name of Red Stables Lane shall be changed to a name acceptable to the County Surveyor's Office prior to plat filing. Red Stables Lane shall be shown as a 60-foot public access and utility easement to 50 feet south of Lot 4's northern boundary. The easement shown on Lot 2 shall be deleted. The Red Stables Lane easement shall be extended directly to South Third West along the eastern boundary of Lot 1. Lots 3 and 4 shall share a common driveway located within this easement. A statement shall appear on the plat stating the existing approach for Lot 2 shall be revoked at such time as Red Stables Lane serves more than 2 lots and is designated a road. *Subdivision Regulations 3-2 and County Surveyor recommendation.*
3. The no-build zone shall be replaced with a 60-foot conditional public access and utility easement to the south property line. The following statement shall be included on the plat and refer to the conditional public access and utility easement:

"The owners dedicate a 60 foot right-of-way for purposes of a public roadway over and across Lot 3 of Otto's Acres, as shown on the subdivision plat of Otto's Acres, conditioned upon said right-of-way being used as a roadway at the time that it is needed to serve future subdivision on the parcels to the south of Otto's Acres. The lot owners and future owners of lots in Otto's Acres will not be responsible for the construction of the future roadway if construction of the future roadway is attributable to division of land to the south. Further, that no access of any type will be allowed across the easement until the area shown as conditional public easement is opened for public access, as required by the Missoula County Commissioners. No structures, permanent improvements or utilities shall be placed within said right-of-way so as to interfere with the eventual use of the right-of-way as a public roadway." *Subdivision Regulations Article 3-2 and staff recommendation.*

4. Engineering and drainage plans, including emergency vehicle turnaround, shall be approved by the County Surveyor's Office and Missoula Rural Fire District prior to plat filing. Driveway design, including emergency vehicle turnarounds, shall be approved by the County Surveyor's Office and Missoula Rural Fire District prior to building permit issuance. *Subdivision Regulations Article 3-2, County Surveyor and Missoula Rural Fire District recommendation.*
5. A cash contribution shall be made to the County equivalent to \$1 per square foot for a 5 foot wide pedestrian walkway along South Third Street West for the length of the subdivision. The determination of square footage for such contribution shall be approved by the County Surveyor. Evidence of contribution shall be presented to the Office of Planning and Grants at the time of plat filing. *Subdivision Regulations Article 3-2(5) and staff recommendation.*
6. The maintenance agreement for Red Stables Lane and shared portions of driveways shall be approved by the County Attorney's Office prior to plat filing. *Subdivision Regulations Article 3-2(6) and staff recommendation.*
7. The following statement shall appear on the face of the final plat:

"Acceptance of a deed for a lot within this subdivision constitutes a waiver of the right to protest a future RSID/SID for public sewer and water systems, based on benefit. The lot owner shall connect to public sewer within 180 days of when the public sewer main is available to the subdivision. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land." *Subdivision Regulations Section 3-7(2) and Health Department recommendation.*
8. The developer shall contribute \$100.00 per new lot to the Missoula Rural Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants at the time of plat filing. *Subdivision Regulations Article 3-7(2) and Missoula Rural Fire District recommendation.*
9. A Revegetation Plan for Disturbed Sites shall be approved by the Missoula County Weed Board prior to plat filing. Provision for implementation of the Plan shall be included in a development covenant to be filed prior to plat filing, subject to OPG and County Attorney Office approval. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*
10. The plat shall include provision for a future division of Lot 4. *Subdivision Regulations Article 3-1(1)(C) and staff recommendation.*
11. The plat shall include additional public right-of-way and public utility easement along South Third Street West to accommodate the existing utility line and the installation of a walkway. *Subdivision Regulations Article 3-6 and staff recommendation.*

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

THURSDAY, DECEMBER 16, 1999

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

ADMINISTRATIVE MEETING

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

Certificate of Acceptance – Acting Chair Evans signed two Certificates of Acceptance with the Missoula County Surveyor's Office; for County maintenance on Hamilton Way, limits of acceptance are .066 miles; and Common Drive, limits of acceptance are .116 miles. The documents were returned to the Surveyor's office.

Extension Request – The Commissioners signed an Extension Request, postponing the final plat approval deadline for Montana Vista Phase II. The new filing date will be December 11, 2000.

Other items included:

- 1) The Commissioners made the following Board appointments:
 1. Dale Jackson to a three-year term as a member of the Missoula County Tax Appeal Board. The term will run through December 31, 2002.
 2. John Malletta to a two-year term as a member of the Missoula Aging Services Governing Board. The term will run through December 31, 2002.
 3. William H. Towle to a two-year term as a member of the Missoula Public Library Board. The term will run through December 31, 2002.
 4. Frank A. Pettinato to a two-year term to fill an unexpired position as a member of the Missoula Aging Services Governing Board. The term will run through December 31, 2001.
 5. Patricia Rector to a two-year term as an alternate member of the City-County Animal Control Board.

The term will run through December 31, 2001.

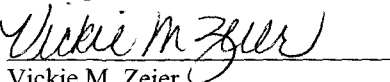
The minutes of the Administrative Meeting are on file in the Commissioners Office.

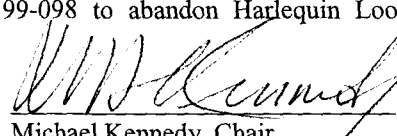
FRIDAY, DECEMBER 17, 1999

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

Claims List -- Commissioners Carey and Evans signed the Claims List, dated December 17, 1999, batch number 357, with a grand total of \$55,609.64. The Claims List was returned to the Accounting Department.

Resolution -- The Commissioners signed Resolution No. 99-098 to abandon Harlequin Loop in the Missoula Development Park Phase II.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, DECEMBER 20, 1999

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

Plat -- The Commissioners signed the Plat for the Lehman Addition, a minor subdivision located in the E ½ of Section 19, T12N, R19W, PMM, Missoula County, a total area of 19.25 acres gross and net. The owners on record are Cheryl K., Robert O. and Marguerite A. Lehman.

Task Order -- Chair Kennedy signed a Task Order with the Montana Department of Public Health and Human Services to support HIV prevention community planning and prevention services to assist in the prevention of the spread of the human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS). The amount shall not exceed \$61,895.00. The term shall be January 1, 2000 through December 31, 2000. The document was returned to the Health Department for further handling.

Amendment -- The Commissioners approved an Amendment to the Osprey Heights Subdivision Condition for an Easement for a River Trail System for the property located between Osprey Heights and the Clark Fork river. The Amendment removes the requirement that the new owner, Eric Hefty, purchase an easement for a river trail system and that any owner of lots 2-7 waive his/her right to protest creation of an RSID/SID for purposes of acquiring the land between each lot and the Bitterroot River for a riverfront trail.

TUESDAY, DECEMBER 21, 1999

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Kennedy was out of the office all day December 21 and 22.

ADMINISTRATIVE MEETING

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

Application for Appointment -- The Commissioners approved an Application for Appointment of Dan Corti, and reappointed Chuck Gibson, for a one-year term with the Local Emergency Planning Committee, which will run through January 31, 2002.

Other items included:

- 1) The Commissioners made the following Board appointments:
 1. Daniel Dickey to a three-year term as a member of the Missoula County Weed Control Board. The term will run through December 31, 2002.

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

WEDNESDAY, DECEMBER 22, 1999

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

Claims List -- Commissioners Carey and Evans signed two Claims Lists, dated December 21, 1999, batch number 385, with a grand total of \$6,257.10; and dated December 22, 1999, batch numbers 384, 388, 389, 390, 391, 392 and 394, with a grand total of \$1,166,547.42. The Claims Lists were returned to the Accounting Department.

Indemnity Bond -- Acting Chair Evans examined, approved, and ordered filed five Indemnity Bonds:

1. Naming Michael Hynes as principal for Warrant #256976 issued September 9, 1999 on the Missoula County Payroll Fund in the amount of \$138.48 now unable to be found.
2. Naming Patricia B. Clawson as principal for Warrant #68357 issued September 17, 1999 on the Missoula County MCPS Payroll Fund in the amount of \$18.47 now unable to be found.
3. Naming Deborah Bate as principal for Warrant #11077 issued September 30, 1999 on the Missoula County General Fund in the amount of \$60.03 now unable to be found.
4. Naming Deborah Bate as principal for Warrant #11135 issued October 29, 1999 on the Missoula County General Fund in the amount of \$149.54 now unable to be found.

5. Naming Blake A. Love as principal for Warrant #70587 issued November 5, 1999 on the Missoula County Payroll 78-42 Fund in the amount of \$431.50.

Plat/Owners Certification – The Commissioners signed a Plat/Owners Certification for the Missoula Development Park Phase 8 and the amended Plat of Lots 1 through 3, Block 13, Missoula Development Park Phase 2, a subdivision located in the N ½ of Section 1, T13N, R20W, PMM, Missoula County, a total net area of 17.75 acres with the owners on record being Missoula County Industrial District.

Plat/Agreements – The Commissioners signed a Plat for the Sweet Grass Addition at Maloney Ranch Phase II, a subdivision of Missoula County located in the E ½ of Section 11, T12N, R20W, PMM, a total area of 58.11 acres with the owners on record being Maloney Properties, LLC. They also signed an Amended Common Area Management Plan and Maintenance Agreement and a Subdivision Improvements Agreement and Guarantee.

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with the Missoula County Public Schools allowing for two substance abuse prevention curricula to be integrated into the curriculum at all Missoula School District I middle and high schools, including Seeley Lake High School and the District’s alternative education programs. The funding will come from the Missoula County Community Incentive Program in the amount of \$82,860.00. The term shall be October 1, 1999 through September 30, 2000.

PUBLIC MEETING – December 22, 1999

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Bill Carey. Also present were Commissioner Barbara Evans, County Surveyor Horace Brown, Chief Civil Attorney Michael Sehestedt and Deputy County Attorney Colleen Dowdall. Commissioner Michael Kennedy was out of the office for the week.

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$1,222,157.06. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Bid Award: County Mobile Data Terminal (Sheriff’s Department)

Captain Don Mormon, Sheriff’s Department, presented the report.

Missoula County Sheriff’s Department has been seeking a Mobile Data Terminal system for their patrol cars. This will effectively enhance the communications ability between the cars, via computer, and the station. It will cut down on traffic over the airways and assist with the working of 9-1-1. The Sheriff’s Department requested and received an appropriation of \$718,000 from the U.S. government. On December 31, 1998, the money was turned over to the Grant Office. The Grant Office put together the packet which the Sheriff’s Department filled out. Approval has been received to spend \$718,000 for this system. In the meantime, the Missoula City Police Department received a bond issue of \$250,000 earmarked for a Mobile Data Terminal system also. The two departments have gone together and on November 2, 1999 an RFP was issued. The vendor’s proposals were opened on November 2, 1999 as listed on Appendix A. A committee comprised of the representatives from the Sheriff’s Department, the Police Department, 9-1-1, the Chief Financial Officer Jane Ellis and Deputy County Attorney Mike Sehestedt reviewed the bids. They have recommended the bid be awarded to the vendors under Option 5 on Appendix A, in the amount of \$865,386. If approved by the Commissioners, the vendors will be contacted and contracts negotiated. The three vendors recommended under Option 5 are Data911, Dataradio and Software Corporation of America.

APPENDIX A

OPTIONS	1	2	3	4	5	6	7
Radios*	Motorola	Motorola	Dataradio	Motorola	Dataradio	Dataradio	Dataradio
Computers	Motorola	Data911	Data911	Data911	Data911	Datalux+	PST
Software	CER	CER	CER	SCA	SCA	SCA	PST
Report				SCA	SCA		
AVL	SCA	SCA	SCA	SCA	SCA	SCA	

- * - This includes mobile and five ground sites
+ - If purchase is made from manufacturer

COST	1	2	3	4	5	6	7
Radios*	493,370	493,370	489,586	493,370	489,586	489,586	489,586
Computers	310,981	228,384	228,384	228,384	228,384	265,200	275,340
Software	201,916	201,916	201,916	132,416	132,416	132,416	126,000
Report				# - 143,145	# - 143,145		
AVL	15,000	15,000	15,000	15,000	15,000	15,000	10,000**
TOTAL	1,021,267	938,670	934,886	1,012,315	1,008,531	900,687	890,926
TOTAL WITHOUT OPTIONS				869,170	865,386		

- # - Option that we do not recommend but put in cost for information only
* - Includes Mobile and five ground sites
** - This AVL cost is included in the software price

Legend of Abbreviations:

AVL – Automatic Vehicle Location System (A GPS-based location system which will locate the patrol unit within 1 meter)

CER – Cerulean Tech Inc.

SCA – Software Corporation of America

Commissioner Evans asked when it was anticipated this system will be in use?

Captain Mormon stated a local valley project could be in place by June 1, 2000 and the system should be up and running by the time snow flies next year.

Michael Sehestedt stated the reason for the delay is because the bid package includes five remote sites in addition to the units in the patrol cars, and several of the remote mountaintop sites cannot be worked on during the winter.

Commissioner Evans moved that the Board of County Commissioners award the bid for the Mobile Data Terminal system in accordance with Option 5 from Appendix A, without report option, in the aggregate amount of \$865,386, as it appears to be the lowest and best bid, contingent upon Federal approval and City of Missoula concurrence. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Hearing: Reconsideration of Comprehensive Plan Appeal – Western Wireless Communication Tower

Acting Chair Carey: Hearing – Reconsideration of Comprehensive Plan Appeal – Western Wireless Communication Tower. Do we have a staff report?

Tim Hall: Yes, my name is Tim Hall, I'm a rural planner with the Missoula Office of Planning and Grants. I'll be representing the Planning Office in this matter. The Western Wireless Company has requested a reconsideration of a request to install or for permission to install a 135-foot tower on a portion of Mount Dean Stone, the lower northwest slope of Mount Dean Stone here in southeast Missoula. The reason for the appeal is the Zoning Officer determined by a letter dated August 12, 1999, that the request did not substantially comply with the designated land use of the 1975 Comprehensive Plan nor the 1986-87 South Hills Neighborhood Plan or the more recent 1998 Urban Area Comprehensive Plan Update and for those reasons denied the request for the building permit which is the reason for the Board consideration. The subject property is within the Missoula City-County building permit jurisdiction. The request for a building permit kicks in the request for zoning compliance. This property is unzoned in Missoula County and therefore consideration must then comply with the Comprehensive Plan or Plans that are in effect for that area. The Commissioners, at a public hearing, that's the Board of County Commissioners, dated September 15, 1999, upheld the decision of the County Zoning Officer to deny the building permit based on testimony and the findings of fact and conclusions of law contained within the staff report. The recommendation for today's reconsideration is as follows: The Office of Planning and Grants recommends that the Board of County Commissioners uphold the Zoning Officer's determination of noncompliance with the Comprehensive Plan based on the findings of fact and conclusions of law contained in this staff report. In determining the compliance of the project, a number of plans were reviewed and tests were made as is outlined in County Resolution adopted in 1983 and 1985. We also were aware of some other decisions that had taken place in and around the facility in question. The Comprehensive Plan and amendments include, and I stated them before, but, the Missoula Urban Comprehensive Plan, the 1998 Update, 1997 Miller Creek Area Comprehensive Plan Amendment which is very close and just south of the subject property, the Missoula Urban Area Open Space Plan adopted in 1995, the Inventory of Conservation Resources for Missoula County amended and updated in October of 1992, and the South Hills Comprehensive Plan Amendment adopted in February of 1987, Section 9 portion of that plan. Key findings of these reviews include from the Missoula Urban Comprehensive Plan, and I'm just going to highlight some of the ones that stuck out in our mind in helping us determine the noncompliance. A key goal in the Missoula Urban Comprehensive Plan 1998 Update, Vision Statement, was to "preserve the valued characteristics of the community ... to protect our critical lands and natural resources, such as hillsides and open spaces." In 1997, the Miller Creek Area Comprehensive Plan stated in Chapter 2, Page 23: "To protect for the public enjoyment the scenic views of hillsides as well as scenic vistas from hillsides." It also further stated: "To encourage compact development and clustering when that preserved the rural character of the area." It "required that new construction not adversely impact historic viewsheds, if possible." Page 74 also shows that a portion of Mount Dean Stone is not within, but is immediately adjacent to the proposed Open Space Cornerstone outlined in the Missoula Area Open Space Plan, in Sections 16 and 17. In 1995, the Missoula Urban Area Open Space Plan stated, in Part 3, The Specific Character of Missoula's System, that "the system can clearly be anchored by the prominent hillsides which surround the urban area on three sides. Mount Jumbo, Mount Sentinel and Mount Dean Stone are the key contributors." In Part 3 on Page 37, the Open Space Suitability Criteria for Views and Vistas states "that the land reinforces a larger area of visual open space ... the land provides a necessary and otherwise unsecured visual resource ... and that the land visually connects to other elements in the open space system." In 1992, Missoula County amended the Inventory of Conservation Resources for the County and that Inventory continued to declare that Mount Dean Stone was a scenic open space as seen from the Missoula Urban Area. It also identified Dean Stone Mountain as a scenic feature. The summary of our findings include that Mount Dean Stone and the surrounding area are consistently identified in adopted documents as scenic resources and open spaces worthy of protection. In Section 9, the location of the Western Wireless proposal, is governed by the South Hills Comprehensive Plan and that is within the Open Space Cornerstone. And lastly, if the development does occur in this rural and open resource area, both the Urban Comprehensive Plan and the Miller Creek Comprehensive Plan Amendments encourage compact development and clustering, while not adversely affecting the viewsheds. From the staff report from the previous submittal, dated September 15, 1999, some of the background worthy of mention here for this record includes the information that the peak of Mount Dean Stone has been used as a facility for two communication towers, 65 feet and 100 feet tall, and multiple ground mounted dish antennas, as well as two electronic equipment shelters, so there is an historic use on top of the mountain. In December of 1992, a proposal was submitted to the Planning Office to locate an FM radio tower 2,500 feet downslope from the peak of Dean Stone Mountain, now at an elevation of 5,600 feet. The staff of the then Office of Community Development determined that that site did not comply with the Comprehensive Plan and denied the permit. The Board of County Commissioners overturned that denial through an appeal process and the 280-foot FM radio tower was constructed at the new site. The current applicant now wishes to construct a 135 foot cellular communications tower site that is approximately 4,500 lineal feet downslope from the peak of Dean Stone Mountain at an elevation of approximately 5,200 feet, that is 2,000 feet away from the radio tower

site that was appealed and approved by the Board of County Commissioners. The applicants state in their application that the existing site on the peak of Dean Stone Mountain is out of tower space and cannot accommodate more antennas or microwave dishes. They also state that the existing lease which they do have on top of Dean Stone Mountain is a short-term lease and that the long-term lease could not be reached with the existing owner, that a long-term lease for the site and towers that can handle their needs and antennas is what they need. The previous submittal concluded that it has been the practice of the County, through the Planning Office, to encourage co-location of these facilities, and co-location does not necessarily mean antennas on the same structure, but located within close proximity to one another, when that can occur and not provide interference with one another. Clustering of the facilities meets the goals of the plans mentioned and preserves the visual resource of the mountains and hillsides that surround the urban valley of Missoula, the designation of Mount Dean Stone mountain as a potential Open Space Cornerstone being evidence that a visual resource exists at this location. The Telecommunications Act of 1996 preserves local authority over wireless telecommunications facilities, such as cell towers, as long as local regulations do not discriminate. The applicant's consideration of need must be weighed against the goals and objectives that are expressed in the communities adopted plans. These plans found that, in the past, it's been important to preserve open space and viewsheds in the Missoula valley and in Missoula County. Developing a third communications facility site that is highly visible on the slope of Dean Stone Mountain will continue the visual clutter and therefore not meet these goals. That sums it up pretty well. You're open for comments.

Acting Chair Carey: Thank you, Tim. Do you have any questions at this time, Commissioner Evans?

Commissioner Evans: No.

Acting Chair Carey: Would anybody like to make a representation on behalf of the applicant?

Ron Ewart: Good afternoon, my name is Ron Ewart, I'm with Eli & Associates and I'm representing Western Wireless Corporation. First, we'd like to thank the Planning Staff and the Commission for allowing us the opportunity to rehear this proposal. There are several points which we feel are very important that need to be brought out and discussed, some of them which have not yet been discussed in adequate detail. I have several pages of notes and I'll try to get through them quickly, however, I apologize if I say something that you already know, but I think we need to be comprehensive in this particular presentation and then if there are certain items we need to discuss or other items, we can bring those along as well.

First of all, I would like to invite your attention to the air photo on the wall there and if I may, I'd like to approach. Thanks. I went ahead and had this air photo made because I thought it would be important. First, I had several ground photos done and I just felt that an air photo would tell the story a little bit better. There are several maps in the packet, topographic maps, zoning maps, and so on. The Line family owns 623 acres, most of it here in Section 9, and then a quarter section in Section 5. This would be Whitaker Drive here, Ben Hogan, and then up in here, this is Skyview, Hillview comes up here and dead ends. The property is all in the County and it is unzoned. The proposed location of the facility would be right about here. One of the things I wanted to present with this particular photo is not only the existing built environment, but also to show the adjacent zoning. Adjacent to the property immediately in this area is more unzoned land, all of this in here is zoned C-RR1, which is one unit per acre. All of this here is all City zoned property, at least 4+ per acre. All this in here, this is Mansion Heights, which is under construction at this time. This is County 4 per acre. This is the ZD4, the Pattee Canyon zoning which allows, I believe, about 1 per 3 acres, but there's quite a bit more conditions to that. ZD32 is one unit per 2 acres. Of course, if you have constraints, there may not get that much density, but I wanted to just show this so that people have a realization of what the surrounding area is zoned and to help people to appreciate the fact that the Line family has kept this land open and undeveloped, under agricultural and resource production, for the last 70 years.

The points that I'd like to make basically fall into two categories. First of all, compliance with the Comprehensive Plan, which is very important because that technically is the reason for the denial at this point, and secondly, need, both from a community and technical perspective. As you know, the reason that substantial Comprehensive Plan compliance must be found for approval of a building permit within the jurisdiction of the municipality comes from the authority of the State's Supreme Court "Little v. Flathead," where the justices considered the question of how closely a Comp Plan must be followed. In that case, there was a shopping center that was being proposed on land where the Comprehensive Plan designed residential uses. The Justices affirmed that plans must be flexible to reflect changed circumstances and that substantial compliance for land use decisions is needed as opposed to strict compliance. The 1998 Urban Plan states that it is a guideline and should be updated to reflect current conditions. Use of the plan requires a balancing of its components on a case by case basis, as well a selection of those goals, policies and proposals for action that are most pertinent to the issues at hand.

The reason stated in the staff report for denial of the building permit for the proposed communications facility is that it does not substantially comply with the designated land use of the 1975 Missoula County Comprehensive Plan, the 1986-87 South Hills Neighborhood Area Plan, or the 1998 Urban Area Comprehensive Plan Update. However, we believe that this proposal does substantially comply with not only the land use designations of the maps, but also with the goals and objectives. First of all, considering the 1975 County Plan, since the other plans are amendments to this one, this plan sets forth a few broad goals, none of which are contrary to this proposal. The land use designation of the 1975 plan for this property is open and resource. So what we need to do is to look at the intent behind that designation. On the map it states as follows: "This plan recognizes the role that natural resources play in the lifestyle of the citizens of Missoula County. In order to promote orderly development and protect the resource that stimulates that development, the designation of Open and Resource lands is made to protect areas of important natural resource production and extraction, (i.e. forestry and agriculture); to protect areas of natural hazard, (i.e. steep slopes and floodways); and to reserve land for the future where development in the time frame of this plan would be premature and costly. While the Open and Resource Land is not a primarily residential designation, residential development of no more than one dwelling per 40 acres would be in keeping with the intent of that classification. The development of agricultural, recreational and forestry activities with their associated uses should be encouraged within these areas."

I think it's important that we look at the elements behind that intent statement. First of all, this communications facility will not in any way harm areas of important natural resource production and extraction. Forestry and agricultural activities will not be hindered and they will continue unabated, even after the facility is installed. Areas of natural hazards, such as steep slopes and floodways, will also be unaffected. There is an existing road to the site, so

no new roads will be built. There are no known environmental or resource value constraints of the site in regards to this particular proposal. The intent statement does recognize that the designation cannot account for future needs, as the plan was written over 25 years, when technology did not demand this type of proposal. The designation recommends that if residential land use is done, it should be at one unit per 40 acres. The Line family owns 623 acres. If a literal interpretation of that designation is made, then 25 residences might be allowed over the entire ranch. One might agree that 25 homes over the property might disturb areas of natural resource production, let alone the visual impact. The last sentence of the intent statement, which is extremely important, is that the development of agricultural, recreational and forestry activities, with their associated uses, should be encouraged within these areas. We meet this part of the intent in two different ways. First, because the development of agricultural and forestry activities will be encouraged with this proposal. The lease money from Western Wireless would provide the Line family with a portion of their means to continue the land in resource production, to maintain and manage their cattle, mend their fences, control their weeds, and all the other expenses that go along. We all know that farming of this scale doesn't pay these days. The family would like to continue ranching and keep the land in tact, open and in the family. This proposal would help to encourage that, just as the statement recommends.

A second manner in which this part of the intent is met is in that usual associated uses should be encouraged is that if there were a so-called equivalent zoning, and if the land were zoned, it would probably be zoned C-A1. The C-A1 zoning district allows as a permitted use 40-acre land parcels and utility installations such as this proposal. The reason that we have comprehensive planning is because it sets up a guideline for zoning regulations to follow. Our state statutes are clear about this. Section 76-2-203, MCA, states that zoning regulations must be made in accordance with a comprehensive plan, which in 1999 was changed to "growth policy," and our own zoning regulations themselves state that their purpose is to "promote and guide development consistent with the goals and objectives of the Comprehensive Plan of Missoula County and the laws of the State of Montana." Therefore, if the 1 per 40 zoning allows for a communications facility, there must be good rationale for the 1 per 40 comp plan designation to allow for the same. For these reasons stated, this proposal substantially complies with the intent of the open and resource designation of the 1975 plan.

Regarding the 1998 Update of the Missoula Urban Comprehensive Plan, key findings of the staff report from the plan are that we must "protect our critical lands and natural resources, such as hillsides and open spaces" and to "protect human resources." This proposal would not do anything to harm our hillsides or our human resources. The report goes on to mention other sentences from this and other plans also which seek to protect hillsides and visual open spaces. They all mean about the same thing, and yes, these are very worthy goals. Of course we all want to protect our hillsides and views. The Line family certainly does, and this proposal will do exactly that, protect our hillsides and visual open spaces. The pressures of development to avoid financial strains of managing such a large ranch can be mitigated through the lease money for this facility. Yes, there would be one more communications facility on a ridge downslope from Mount Dean Stone, but I seriously doubt it would be overly noticeable.

I'd like to just take a quick look, this is a simplistic diagram of what the tower might look like. It will be 135 feet above ground level which is less than half the height of another tower up the same ridge along Dean Stone. It will be made of tubular steel so it will be semi-transparent, you can partially see through it. It will be gray in color so it might blend in on the cloudy days; no hazard paint. The other towers up there are red and white colored and at least a couple of them have red lights that you can see at night, so airplanes don't run into them. But the FAA has already determined that this tower would not need hazard paint or lights, and there would not be guy wires. So, hopefully, this particular, the design characteristics of this particular facility would be such that it would be as least noticeable as possible.

Commissioner Evans: Ron, you can slow down, we're not in that big a hurry.

Ron Ewart: Okay. I've just got a lot of things to say and I don't want to take up too much of your time. Okay. Now, it will be on a ridge downslope from the summit, so from some angles there will be a mountain behind it, so the facility will blend in with the mountain behind and help it to keep low profile and less noticeable. From other angles it will be skylined. It is important to understand that the goals listed in the staff report are, they're very worthy goals, but in a way they're lofty and not that specific. Because of the fact that Missoulians value open space does not mean that the proposal should not be allowed. Nowhere in the Urban Plan or any other plan does it state where communication facilities are allowed or not allowed, as it so states in the zoning regulations. But again, the elements contained within the comprehensive plans are not specific because of the fact that the Line family is asking for a fairly low profile antenna on their property while preserving the remainder of their 623 acre ranch, they are meeting every goal related to hillsides and viewsheds. The bottom line is that with this proposal, the hillsides will still be protected and the visual resources of the hillsides will still be appealing. There will be an effect upon the viewshed but we feel it will be minimal due to the design characteristics and the location of the facility.

The staff report also states the proposal does not comply with the South Hills Neighborhood Plan. Again, this plan does not mention allowable locations for communication sites, but it does show in its development plan the area to be one dwelling per 40 acres. In the legend description, the plan states that "these areas should be preserved as open space through zoning, conservation easements, the transfer of development rights or other voluntary measures. To encourage such preservation, density of one single family dwelling unit per 40 acres is recommended and clustering of development is favored." Again, if the land were to take on the one per 40 zoning, the proposal would be allowed. The designation recommends voluntary measures of land use preservation. What could be more of a voluntary preservation technique than keeping such a large piece of property in the family as a working ranch? One communication site on 623 acres certainly meets the intent of the open and resource/one per 40 designation of the applicable comprehensive plans.

The staff report states that the County has no expressed policy on the siting of communications facilities but that staff is researching the development of an ordinance that would establish the submittal, review criteria and required findings for future facilities. This would be a worthy endeavor, because if decisions are to be based on a set of rules they need to be easily understood for everyone to follow. In the absence of such an ordinance, we can only rely upon interpretations of the comprehensive plan. The absence of clear guidelines on facilities siting cannot be reason to deny the proposal. Part of the reasoning for denial of the comprehensive plan compliance is that the proposed structure is not clustered or co-located with others such as those on the very top of Mount Dean Stone. The staff report states there are clusters of communications facilities in the County that include Mount Dean Stone, TV

Mountain and Six Mile Peak. There are a couple other sites located singularly, one on Waterworks Hill and there are a couple on top of Hellgate Canyon on the south side of the ridge. There are two existing towers south of the summit of Mount Dean Stone and one northwest of the summit, as this would be. From the main part of Missoula, the proposed site could appear clustered with the other sites because of the angle of view might somewhat align them. So it depends on where you're at will depend upon whether or not this tower will be skylighted or whether or not it will appear to be clustered with the others. As I was driving around looking at the 280 foot tower and depending on where you're at, it looks like it's right there on top. So it's really your angle of view.

The proposed facility cannot be located on the very summit of Mount Dean Stone nor can it be co-located with existing towers, both because of electromagnetic interference of the many existing antennas and because a long-term lease with the property owner on top of Dean Stone cannot be negotiated. When we say the word "cluster," that is a relative term. For example, a galaxy is a cluster of stars in relation to the universe and in the grand scheme of our little world here, the Missoula valley, this proposal would still amount to a degree of clustering because Mount Dean Stone is already an established telecommunications site. The staff report mentions that it is highly valued for its visual resources. The area is not a cornerstone, but is a proposed additional cornerstone according to the Open Space Plan. The Open Space Plan states that such an area is a high value open space but that development will not be prohibited. These values were attached to the area in 1995, long after the communications facilities were already existing on the mountain. The area was designated as a potential additional cornerstone in the Open Space Plan even with the towers being up there. Therefore, the mountain and viewshed should still be a highly valued visual resource even after this proposed relatively low profile facility is installed as well. So too will the Line family ranch continue to be a highly valued visual resource for all of us to enjoy over the years.

The staff report mentions that the proposal is not compatible with the surrounding land uses pursuant to Resolution No. 85-082. We beg to differ, because the facility would be compatible with the surrounding uses and open spaces. No, it would not be the same, but compatible does not mean the same or similar. It means "able to get along with." The cattle and any other operation on the ranch will get along with the facility. There would be no adverse impacts to either. Resolution 83-99, Paragraph C, states that if the requested permit is for a use different than the designation on the land use map, but the proposal would comply with the land use goals, objectives or policies specified in the comprehensive plan, the proposed use will be in compliance with the plan. This proposal substantially complies with the goals, objectives and policies contained within the applicable plans for all of the reasons so stated, and we feel that it is compatible with the surrounding, existing uses.

The second part of my presentation, which I don't think is as long, has to do with need. From a public use and safety standpoint, cellular phones are no longer a novelty, many people use them regularly these days, often times in emergencies. Cell phone usage is expected to double in the next couple of years, and Western Wireless cannot grow with demand on the existing site, even if they could negotiate a new long-term lease. We must adapt to new technology and provide for the increased safety of our people wherever we can. The proposal would undoubtedly help increase the coverage and the signal strength for cell phone users. As you may know, there are many dead zones or areas where communications is marginal. Here we have a chance to make cell phones communications better.

The question in some people's minds is, is this the right place for this proposal? Another question would be where else can it go? It is impossible to stay upon the top of the summit for the reasons stated. There are other mountains and ridges around the valley, many of which are outside the building permit jurisdiction where a comp plan compliance determination is not needed. But that doesn't mean they would be less visible at a different location. In fact, this might be one of the least visible location around the valley in the immediate area. The design characteristics of the tower also make it as least visible as possible. The technical reason for this particular location is couched behind a great deal of research and study by Western Wireless. Kirk VanSoest, who is here, did state before that, I don't want to steal his thunder, but according to the minutes of the last meeting he stated: "The reason this site is so important to us is our design and our network. It is the only site that can see down and bring up our microwave up from Hamilton, Darby and the whole Bitterroot Valley. There really isn't an alternative site that can see that whole valley into Missoula, and see as well as it does."

Bryan Romeijn of Western Wireless, who is on vacation and couldn't be here today, stated in a letter that all interconnect microwave communications from other established cell sites east and west on I-90 and north and south on US 93 depend on this mountain.

Kirk had also brought up another point that relates to community need and benefit for this proposal. The FCC requires that systems be set up so that a 9-1-1 operator can locate within 200 feet the person who is making a cell call to 9-1-1 for emergency and safety reasons. Because of frequency spectrum limitations, there is too much interference on top of the mountain for reliable service of this new technology. The proposed site will better serve the needs of this upcoming FCC requirement as well as the public health and safety.

Another consideration relating to need is that if Western Wireless Corporation is not allowed to establish a permanent site at this key location it will be placed at a significant disadvantage to its existing competitor. Other permits for the expansion of facilities have been granted where circumstances are similar. Obviously the decision of each and every proposal should be based upon its own merit and pertinent documents and we believe in this case it can be conclusively shown that this proposal does meet compliance with the Comprehensive Plan, with other pertinent documents and site specific conditions. The visual impacts of this relatively low profile facility on a 623 acre private ranch will be fairly minimal, far less adverse than the inability to provide adequate and quality service to help provide for the public health and safety. The Line family has owned and operated their ranch for 70 years, all the while watching developers build homes and subdivisions in every direction but south. We do not know what the future holds for the ranch, but this facility will at least help the family to continue their ranching lifestyle, so that we all can keep looking up toward the south hills and hopefully continue to see bulls grazing instead of bulldozers grading.

Commissioner Evans: Oh, very good!

Ron Ewart: I just had to wind it up with that.

Acting Chair Carey: Additional comments, please? This is a public hearing.

Ron Erickson: Members of the Commission and other friends in the front of the room, my name is Ron Erickson. I am the legislative, the legislator for the district in which this particular project would take place. Some of my other background includes the fact that I live in Pattee Canyon and, as one is seeing some of the map up there for ZD4, I've been very, very involved with issues from that zoning district over time. I was also the chairman of the Open Space Advisory Committee when the Open Space Plan passed and it turns out to be an important part of the argument that's been given to you. The last time that I was here I made one major point. My major point then was that there was no good plan for where our sacrifice zones should be, where we really want to have such towers. I was pleased to hear Ron speaking, saying that some work is ongoing on that now. I think that's extraordinarily important that you do that. That was the major concern I had at the time. At the time and still, I have mixed feeling. I have mixed feelings because I greatly respect the Line family and what they have done with the land over all the time they've had it. I have great respect for Ron, who was at one time a student in one of my graduate students while he was working toward the planning degree that he got. And I think that he made some interesting arguments. Nonetheless, I continue to go ahead and say yes to the Office of Planning and Grants. They're working off of a comprehensive plan. It's a comprehensive plan that had been amended many times but didn't come easily. We don't have very many people in the audience today testifying on this particular request but there have been hundreds and hundreds of Missoula people involved for all of the years in coming to this comprehensive plan. I think that you have to be extraordinarily careful to go ahead and overturn what a comprehensive plan is suggesting. I know that when we were working on the Open Space part of that plan, that we had quite a number of open houses, that we had folks coming and talking to us, that we then had hearings, both for the City and for the County, to pass that plan, and that visual resources were extraordinarily important to people and for you to overturn the Comprehensive Plan here, you're overturning the wishes of a rather large number of people in Missoula. So, I'm very happy that you're working on a policy. I think it's needed, and it may well be that by the time that policy is finished, this turns out to be the site. So be it if that's it. But, right now I don't believe the plan asks you or allows you to do this. Thank you.

Acting Chair Carey: Thank you. Further testimony?

Tim Line: My name is Tim Line. Our family is, of course, the landowner of this proposed site. And the family is here today in support of this tower and we request that the Commissioners find that the tower is in substantial compliance with the Comprehensive Plan. Our property serves as a valuable open space for the community and the family desires to maintain this open space, and also to maintain our family ranching operations. Doing so requires the expenditure of substantial family financial resources. Outside revenue generating opportunities are really rare and we have to take advantage of these opportunities whenever we can as long as that allows us to maintain our desired goals of open space. I would submit that this proposed tower would pose a significantly less impact than other revenue generating opportunities that we might take, such as subdividing, take clearly the one house per 40 acre land use that would be allowed on our property. I thank you for time in reconsidering and request that you find that it complies with the Comp Plans.

Acting Chair Carey: Thank you.

Kirby Christian: Hello, my name's Kirby Christian. I represent the Line family and Western Wireless. I wanted to just bring forth a couple of points and respond to a couple of questions that had been posed to me. One of the concerns that has been raised throughout the process is that this might open a floodgate to this type of development and I did want to let the Commissioners know that the Line family, as part of their contractual obligation with Western Wireless, has indicated that this will be the only facility on their property in this area. So, substantial additional development, at least in that particular area, is not in the future. The other issue that I wanted to bring up is that right now under current law there is generally allowed two service providers for cellular service in a community, and CommNet is already here with a facility on that mountain. The second one would be Cellular One with the proposed site on the Line family property, so while you may have TV stations, I can't say that other uses may not be approaching you, you won't or shouldn't have a large influx of cellular providers approaching you for tower space or tower access. Another, I guess, important point is that we don't view this proposal as asking you to overturn the Comprehensive Plan. We view this proposal as being consistent with the Comprehensive Plan and if you look at the only County zone that would logically be applicable to this site, it's C-A1, which is one home per 40 which allows for communication facilities. So I think it puts the County in a real precarious position to say this is against the Comprehensive Plan when the zoning that would implement your Comprehensive Plan allows the use. I also think it's difficult to defend a position to say in 1992, a 280 foot tower is in compliance with this Comprehensive Plan and in 1999, a 135 foot tower is not. I really plead with you to recognize the fact that these clients have no desire to become embroiled in any type of controversy with the County. They have been very good stewards of their land and I think you would all agree to that. But they also believe that this is an ability or an opportunity for them to generate some revenue that will allow them to continue using the property as they have in the past. And if that is taken away from them, you know, the revenue dollars are significant enough that they don't have a lot of other opportunities to recoup that type of investment without much more invasive type needs. The other issues that had come up, and I don't want to go into those, I'm just going to put my memo as part of the record, but, I know that your attorneys have probably briefed ... I'm going to just submit my letter of October 8, 1999 for the record. Some other items that I think mitigate this tower, and Ron went through them, I think, in very good detail, is that it's a 135 foot tower without hazard paint, without flashing lights, without guy wires, located as close to the top of the Line family property as possible with an existing road. So there are a lot of mitigating factors in looking at placing the tower where this tower is. I know the engineers are here and can answer questions regarding need, but there is a substantial and real need. The existing facility won't accommodate their future growth. The existing lease won't accommodate their existing competition, you know, competitive environment in this area and the Line family has offered them a 30 year lease under terms that are acceptable to them and under terms that are acceptable to the Line family. So, it's a long-term established site which can also be co-used by other providers because it will have sufficient capacity to allow that and in moving in a couple of years from the tower that is there will provide some additional co-use space for other service providers, possibly, at the top of the mountain. And, so, I think it's a proposal that deserves reconsideration and we very much appreciate your time and effort in doing that. Thank you.

Kirby Christian entered the following letter into the record: RE: Reconsideration of Commissioners Decision BCC99-431 Denying Western Wireless Corporation a Building Permit on the Line Family Ranch. Dear Commissioners: Our firm represents Western Wireless Corporation and the Line Family Limited Partnership with regard to the above referenced matter. Western Wireless Corporation and the Line Family Limited Partnership request the Board to reconsider its decision of September 15, 1999, denying Western Wireless Corporations' request

for a building permit to construct a communications tower on the Line Family Ranch. This Board of County Commissioners denied the request for a building permit, basing its decision on a finding that the building request does not substantially comply with the S. Hills comprehensive plan. Substantial compliance does not require strict compliance with each and every term of the comprehensive plan but only that the general intent of the plan is carried out and given effect. See Little v. Bd. of County Commissioners of Flathead County, 193 Mont. 334, 353, 631 P.2d 1282, 1293 (1981). Western Wireless' request for a building permit substantially complies with the South Hills Comprehensive Plan and should be approved for the following reasons:

1. If the proposed site were zoned the most likely zoning district classification would be "C-A1 Open and Resource Land." The record in this case establishes that the proposed site falls within the area of the comprehensive plans designated as open and resource. Board's Findings at p.4 If the proposed site were zoned, the Missoula County Zoning Regulations governing the C-A1 district expressly allows "[p]ublic and private utility and communication installation and line" as a permitted use. Msla. County Zoning Regs., Ch. II, Section 2.06, para. D.8. The zoning regulations are promulgated pursuant to the county comprehensive plan, and one of the purposes of the regulations is to promote and guide development "consistent with the goals and objectives of the Comprehensive Plan of Missoula County[.]" Msla County Zoning Regs., Ch.I, Section 1.02, para. 11. Therefore, I submit that if the zoning regulations contemplate a communication installation in the areas designated as open and resource, and the regulations are in compliance with the comprehensive plans, then WW's proposed communication installation is also in compliance with the comprehensive plan.
2. Dean Stone Mountain is already an established communication site occupied by AM/FM radio sites, television and paging company sites, emergency service towers, and existing cellular communication sites. Western Wireless Corporation would like to establish its proposed new cellular communication site to allow for expansion of needed cellular services in the Missoula and Bitterroot valleys.
3. The visual impact of an additional tower at the location proposed by Western Wireless would be minimal. There are two multi-use towers at the summit of Dean Stone Mountain and an FM tower 2,500 feet down slope from the summit. Two other towers are located down the southwest ridge of the summit, one of which is occupied by a cellular provider who competes with Western Wireless Corporation. The new proposed tower is a 135 foot self-supporting tower that is FAA approved and does not require lights or hazard paint. Its visual impact is significantly less than the towers that currently exist and when included in the cluster of towers that currently exist will provide only a minimal visual impact.
4. Dean Stone Mountain communications site is a well established backbone site for cellular service. It allows that interconnect microwave communications from other established cell sites east and west on I-90 and north and south on US 93 depend on Dean Stone Mountain. If Western Wireless Corporation is not allowed to establish a permanent site at this key location it will be placed at a significant disadvantage with existing competitors who have established long-term sites on Dean Stone Mountain.
5. Cellular communications is no longer a novelty item but is a utility in significant demand. This utility is the backbone of many local businesses in the Missoula area. It provides needed emergency service access for 911 callers and other emergency service providers. The proposed communication site is necessary to provide adequate and quality service to the Missoula valley into the future.
6. Federal law requires that competitors in the wireless communication markets be allowed to provide functionally equivalent services in a competitive environment. The purpose of the Telecommunications Act of 1996 (the "Act") is "to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition." Sprint Spectrum L.P. v. Town of Easton, 982 F. Supp. 47, 50 (D.Mass. 1997) (quoting Paging, Inc. v. Board of Zoning Appeals for County of Montgomery, 957 F.Supp. 805, 807 (W.D. Va. 1997)). Denial of the proposal of Western Wireless constitutes an impermissible discrimination in violation of the Telecommunications Act of 1996, 47 U.S.C. §332(c)(7)(B)(i)(I). Another cellular telephone service provider currently has its own tower on the top of Dean Stone Mountain. Substantially the same comprehensive plan designations applicable to the top of Dean Stone Mountain also apply to the proposed site. Both sites are designated as open and resource areas. The Board's denial of Western Wireless' tower application when it has granted a long term location to a competitor discriminates against it in violation of the Act. Illinois RSA No. 3, Inc. v. County of Peoria, 963 F.Supp. 732, 743 (C.D. Ill. 1997).
7. The Board's decision to deny applicants is not based on substantial available evidence:
 - i) The Board's findings conclude that the "tower is not in substantial compliance with the activities designated by the plan for the area." Board's Findings at p.5. This conclusion is followed in the same paragraph by the statement that the County does not have a formal plan for siting communication facilities, and by a discussion of an informal practice of co-location of facilities. The identified informal practice is not a part of any comprehensive plan, and therefore, cannot justify a finding of non-compliance.
 - ii) The Board's decision identifies the land uses surrounding the proposed site as "vacant, wooded hillside" and concludes that the proposed tower is not compatible with 50% of surrounding land uses within 300 feet of the applicant's property as guided by Missoula County Resolution No. 83-99, Section 2.d.V. as amended by Resolution No. 85-82. Board's Findings at p.7. Why is the communication tower not compatible with "vacant, wooded hillside" uses when other towers exist in this area and arguably a tower is less obtrusive than residential uses which are acceptable under the plan.
8. Other building permits have been granted in substantially the same area. On December 2, 1992, the Board of County Commissioners found that Max and Sheila Murphy's FM radio tower, which is only 2,000 feet from this proposed site, was in compliance with the same applicable comprehensive plan. Other permits for expansion of existing facilities have also been granted in the past few years. Denial of Western Wireless' proposed tower under such circumstances is arbitrary and capricious.

Based upon the above contentions, my clients respectfully request a reconsideration of the Board's decision and further request a meeting on this matter with the Board if the Board feels more information is required to approve the application.

Sincerely, CHRISTIAN, SAMSON & JONES, P.C. – Kirby S. Christian

Acting Chair Carey: Thank you, Kirby. Further testimony?

Commissioner Evans: I have a question.

Acting Chair Carey: Question from Commissioner Evans.

Commissioner Evans: For somebody out there, I heard you say something about semi-transparent something or other. Would you explain to me how you can have a strong tower and it's still, you know, I think it's a wonderful idea, I'd just like a little clarification.

Ron Ewart: What I meant, that was my term, I admit it came out of my head.

Commissioner Evans: So it isn't part plastic, okay?

Ron Ewart: Well, the reason I said that, see, some towers are solid steel and this you can partially see through it.

Commissioner Evans: Okay, the structure is such that you can see through it, not the materials from which it's made.

Ron Ewart: Right, right, tubular steel.

Commissioner Evans: Thank you. I just wanted to clarify that because I thought it was a really interesting concept. Thank you. Thank you. If the hearing is over, then ...

Acting Chair Carey: I have a question. Perhaps Kirby, you could answer this. I'm a little unclear on this. It sounded from what Ron said that there was an attempt to renegotiate the lease and that attempt failed.

Kirby Christian: I haven't been involved in that directly, so I would probably defer, but my understanding was is that the current lease will not allow for a long-term site for them and that the current capacity of the facility that's there will not allow for their long term expansion needs.

Commissioner Evans: And that lease is not with the Line's, it's with somebody else, is that correct?

Kirby Christian: Yes, right.

Acting Chair Carey: What I'm trying, maybe Ron could best answer this. Were you involved in back then?

Ron Ewart: No.

Acting Chair Carey: What I'm trying to get at ...

Kirk VanSoest: Maybe I can answer that.

Acting Chair Carey: Okay, would you identify yourself sir?

Kirk VanSoest: My name is Kirk VanSoest. I'm the regional technical supervisor for Montana and Idaho.

Acting Chair Carey: Okay, the question I have is, was there an attempt to renegotiate the lease and it didn't succeed?

Kirk VanSoest: Yes, that is correct.

Acting Chair Carey: Okay, now why was that attempt made if the site is technically not, won't support such a tower?

Kirk VanSoest: That was done prior to the building that the landowner has done in the last couple years. He, we only had a 40 foot tower up there. He lengthened it and put it up at 100 foot and brought a lot more users on there which totally got rid of our capacity to put more antennas up there. One that we touched on earlier was the 9-1-1. I need a panel that's going to be able to go up and with line of site locate these mobiles that are dialing 9-1-1 and I do not have the ability to do it on that structure right now.

Acting Chair Carey: Technically, then, it's not possible to locate the kind of tower you need there, there's just no way?

Kirk VanSoest: There's no way I can add another antenna structurally. The structural integrity of that tower is overloaded. It will not hold anything more.

Acting Chair Carey: Okay, but I'm trying to talk about the site itself. I mean, would the site support the tower that you need and you just can't negotiate good terms?

Kirk VanSoest: That's kind of a tough question. I don't know if I can answer that completely. There's a lot, he's, they've built a lot of towers up there since we've been there. Again, this market was purchased by us. The original lease was done by Montana Cellular, which we purchased in 1993. So those leases were already done prior to us purchasing that. I don't believe, it would be pretty hard to put a tower up there existing in his location that would give us a path to see down through the valley as well as overlook the town of Missoula.

Acting Chair Carey: Pretty hard, but not impossible?

Kirk VanSoest: Not impossible. I don't think I could answer saying impossible.

Acting Chair Carey: Okay. What, I guess, I'm trying to get at is, I thought I heard Ron say that this particular proposed site on this mountain is the only place you can put a viable tower for your business.

Kirk VanSoest: That ridge and that mountaintop are the only viable place to put a tower.

Acting Chair Carey: That ridge, but that site on that ridge?

Kirk VanSoest: Yes.

Acting Chair Carey: That's the only site that will work for you?

Kirk VanSoest: Yes, through our micro, see, we're licensed with our microwave with the FAA and the FCC and we have a certain path location and those are the path locations. If we had to move, we would lose our licenses on that and have to go and redesign the whole network.

Acting Chair Carey: So, it could be done, you'd just have to redesign?

Kirk VanSoest: It could be done. Yeah, we could go to U.S. West and get T-1 telephone lines but their ability to stay on line 24 hours a day, 7 days a week aren't what we want for our service. We feel we have a commitment to this community to keep our service running 24 hours a day, 7 days a week. We have that ability with our own equipment and that's why we, the microwave is very important to us, because we maintain it.

Acting Chair Carey: And I'm trying to make sure that if we were to deny this application that we would not be prohibiting your ability to do business here.

Kirk VanSoest: I don't believe we can reach a lease agreement with the landowner up there other than the Line's family on there, I don't believe there's another spot that that tower can work for us with our network design.

Commissioner Evans: You've tried with that other owner and the other owner has said no?

Kirk VanSoest: We've tried very much so and that's, it's gotten to the point where, we have other locations with him in the state and we're probably going to have to get out of those locations too. We just didn't, we're not what he wants and he's really not what we want, from that standpoint.

Acting Chair Carey: Okay, thank you. Do we want to ask for a comment from our legal folks?

Commissioner Evans: Yes, I would like our legal counsel to put in the record the problems that the Missoula County Commissioners would have if we refused this, from a legal standpoint, the Telecommunications Act, etc.

Colleen Dowdall: There are two issues that trouble me about not finding comprehensive plan compliance. Kirby has addressed one of them and that is the fact that the comprehensive plan, if it was implemented, would be zoned at C-A1 which is a zone in the County that permits utility and telecommunication facilities. So, the very, so to find this not in compliance as a use does not seem to be consistent with the adopted regulations that the County adopted in 1976 as the implementation for the 1975 plan. I would add that Mr. Erickson talked about several amendments to this plan. I don't believe that this is in the Urban Area Comprehensive Plan ... it is, okay. In any event, this is the designation that has occurred, the recommended use, and zoning would permit it if this land was zoned. The second issue has to do with the Telecommunications Act which holds us to certain standards for making decisions with regard to wireless towers and the requirement for co-location is troubling if it is a strict requirement because of the prohibition in the Telecommunication Act against discriminating against certain providers or making it impossible for those certain providers to compete. If we require co-location and if the tower, the first tower is on private land negotiated an agreement that made it impossible for the landowner to lease to anyone else or if the landowner decides himself he's not going to lease to anyone else, then that would preclude that operator from developing in this area. In the last couple of days I've read parts of lots of cases having to do with other decisions in other parts of the country where actions have been instituted against local governments because of their decisions on wireless towers and I, the other element that I think that we are lacking is a requirement in the statute that the courts have interpreted to be very important and that is that any decision you make in denying the tower has to be based upon significant evidence, either that or substantial evidence. In your staff report, David Loomis, on Page 2, under Number 4, he says that the Act says any decision denying the request must be in writing and based on evidence in a written record before the Board. The word that he left out is "substantial" evidence, and that is the language of the statute and it has been subject to much interpretation by the Federal Courts. So, I am not convinced that we have established substantial evidence as to why we cannot allow a tower here and I believe that this statute, this Federal statute, places a burden on the local government that usually isn't placed upon us in land use decisions to make that finding of as to why a particular landowner can't do something. Usually the landowner is under an obligation to establish for us why they should be able to do something, but this seems to require a greater burden on the County.

Commissioner Evans: Thank you.

Acting Chair Carey: Thank you. Do you want to make any comments?

Commissioner Evans: I have several comments I'd like to make and I hope the Line family will listen carefully because this is heartfelt to you. Zone Your Land! Protect your rights to do on your land what the zoning would allow for so that it isn't left to an arbitrary interpretation by whomever looks at it. Zone your land, protect your rights! I do not find that Missoula County has the right to deny you this tower. In looking at the map, it's in the tree line. I don't believe it's going to be visible. I live on Whitaker Drive, I look at that mountain, I don't believe anything you're suggesting to do is un-aesthetic, okay, lousy word. I like the use of my cell phone. I want 9-1-1 to be able to reach the mobile units that are protecting people's lives and property. The Telecommunications Act I think is pretty clear and I don't believe we have any substantial evidence to say no. I believe that if people don't like looking at

something, one, don't look at it, or two, buy the land on which someone is suggesting to put something. So, what you're suggesting is not visibly bothersome to me. If you want to make it look like a tree so that everybody's happy it looks like a tree, fine, that would be a wonderful thing ... semi-transparent tree! I'm prepared to make a motion to not uphold the Zoning Officer's determination and to grant approval of this request for a tower.

Acting Chair Carey: Well, before you do that, I'd just like to say that this is one of the many difficult decisions and difficult tradeoffs that we're required to make from time to time. I think most people would accept that towers on hills are not the most aesthetically pleasing site, that it would be nicer to not have a tower on a hill than to have one. I think most of us wanted to put power lines and power polls underground because it was nicer to look at a building or a view without the obstruction. I also think that many people who worked on the Open Space Plans would understand that if we don't do this, we jeopardize a further, a real degradation of that hill, and that's worrisome to me. I also have a problem, though, I thought I heard the company representative say that, well, we could redesign our system, and I wonder whether or not, in fact, that's what we ought to do because I think that maybe we could make the case that, well, we didn't prohibit the activity, we just made them redesign something. So we wouldn't be denying cellular phone service, we might be making it a tad more expensive but, there's that possibility in my mind. I'm going to support Commissioner Evans' motion, though, based on the fact that I think that we've got to go ahead and allow this to happen in order, ironically, to protect the hillside. I think we ought to get busy quickly to develop a new ordinance that will deal with the proliferation of these towers, and we need to do some things at the state level as well. Some of the reading I've done is that some states have been able to empower local jurisdictions in these matters.

Commissioner Evans: I have sent the third draft that the City has been looking at on those to Sheila Callahan at FM 102 and I would ask that you folks also work with them and us to come up with something. I don't want to look at a draft that says you can't do A, B and C because I don't know if A, B and C is technically wrong, technically right, what you can and cannot do. If you folks don't help to come up with some rules that make sense for you and make sense for us, we may do something that is totally wrong and I don't want to do that. So, I would like, when we get these drafts, to have you folks all look at them, tell us what will work, what won't work, so that we don't do something dumb. Michael, you want to say something?

Michael Sehestedt: I want to just comment that, I mean I think the staff report itself lays out why this is a problem. You go down and they say we're looking at developing a new ordinance and it spells out what we have to have if we're going to be regulating in the environment of the Telecommunications Act. We need a clear purpose statement for all facility types. We don't have that. We need a public process and I think we've got that with this hearing but I think we need something clearer to either permit or deny these to meet the kind of standard of proof that's going to be imposed on us in the Telecommunications Act case. We need application requirements. Here, we're pretty "airy-fairy" and I think we need an application that is quite a bit more specific so we've got something to have a hearing on. We need performance standards including setbacks, co-location, bond requirements, etc. We've got nothing like that in the record and staff is attempting to generate them on an ad-hoc basis in response to an application. I think that puts us in real peril in a Telecommunications Act case. We get challenged, I think it's a problem. And then geographic areas allowed and not allowed. Now, if they're not allowed under the Comp Plan in this area, then they're really not allowed under the Comp Plan or applicable zoning in pretty much any area. That's the interpretation you take of the Comp Plan, then we've pretty much, you know, arguably, I mean if we're going to implement the Comp Plan with zoning that does what we say the Comp Plan does, then we will have precluded them everywhere in the community. One of our problems is that our implementing tool in this case, the zoning, if we zone consistent with the Comp Plan using our standard zoning, this would be a permitted use. Had the zoning initiative in 1976 not been defeated in this particular area for really curious reasons, the area would have been zoned and this would have never come before us. In any event. I think that they set out the ordinance requirements and when you say this is what we've got to have for an ordinance to regulate these sorts of things, it pretty well spells out the peril we're in attempting to do it on kind of an ad-hoc basis.

Commissioner Evans: And that's the reason I suggest, no matter what time or money it takes, zone your land, so that you know what can be done there and you don't have to come down here. Not that I don't want to see you, but I don't want you to have to waste your time and your money on somebody's interpretation.

Michael Sehestedt: Barbara, money spent on attorneys is never wasted.

Commissioner Evans: That's according to him. I move that we approve, that we do not uphold the Zoning Officer's determination of non-compliance, that we find that this Western Wireless application should be granted.

Acting Chair Carey: Well, in view of the, our legal counsel's opinion and my feeling that we will in fact better preserve the hillside in its current state, I'll second the motion. All those in favor?

Commissioner Evans: Aye.

Acting Chair Carey: Aye.

The Board then took a five minute break.

Hearing: Comprehensive Plan Appeal – Ibey Nursery

Acting Chair Carey: I'd like to resume the public meeting and open the public hearing on the Comprehensive Plan Appeal for Ibey Nursery. Do we have a staff report?

Tim Hall: Yes. Once again, my name is Tim Hall, Rural Planner with the Missoula Office of Planning and Grants here to represent Missoula County and OPG. I'll provide a little background on the proposal and a recommendation. This action is for an appeal to a zoning compliance permit request for a building permit on a parcel of land in Butler Creek, north of the Missoula Airport. The applicant is requesting approval of a building permit which kicks in the need for zoning compliance permit. This property is unzoned, therefore, the Comprehensive Plan that is used to guide development in the area is used to determine compliance. It is the Butler Creek Comprehensive Plan which was most recently amended in 1996. The applicant is requesting approval of a building permit for a project consisting of a

caretaker's residence, plant nursery, storage buildings accessory to that nursery and a retail store that will sell products both grown on the site and off site.

Commissioner Evans: Tim, can I ask you to clarify for me which parts were allowed in what we did before?

Tim Hall: I sure will, in my wrap up.

Commissioner Evans: Thank you.

Tim Hall: And the storage of landscaping and irrigation equipment that the Ibeys use for their operation will also be stored on site. The portion of the zoning compliance permit that has been denied was that portion for the retail store which would sell items that are not grown on the site and the storage of landscaping and irrigation equipment used off site. The portions of the project that involve the production and sale of agricultural and nursery products, along with the accessory uses to those agricultural type uses, including the caretaker's residence, were approved. This proposal is located, as I said, on Butler Creek Road adjacent and north of Interstate 90, immediately north of Interstate 90. The legal description is a 6.33 acre parcel in Section 26, Township 14, Range 20, Missoula County, and the applicant is appealing the decision before you today. A little background, we, the Office of Planning and Grants, on December 6, 1999, partially denied that zoning compliance permit as I outlined before. In my letter back to them denying the retail establishment, we did outline the process for appeal and, of course, they have appealed, which brings us here today. Legal notice was published in the Missoulian, so we've met all the statutory requirements. The Board of County Commissioners, on December 8, 1999, approved a subdivision of this 6.33 acre tract of land from the parent parcel, the Hanson Ranch. The purpose of that sale was to the Ibey Landscaping for the use of a plant nursery and for retail sales. In determining Comprehensive Plan compliance for the purposes of building permit requests, we are required to use a number of, two specific resolutions that have been previously adopted by Missoula County Commissions. In Resolution No. 83-99, one of the guidelines for determining compliance, if a location of the use can be precisely determined on the map of the Comprehensive Plan, the use will be in compliance so long as it is included among the activities designated by that plan. And if the requested permit is for a use different from that designation on the land use map, but the use would comply with the land use goals, objectives or policies specified in the Comprehensive Plan, the proposed use would be in compliance. Any other use will not be in compliance with that Comprehensive Plan and so we found the following things as findings of fact that led us to our conclusion and the ones that I'll draw your attention to. In Item 5, the property proposed for this use is identified in the Butler Creek Area Comprehensive Plan as agricultural and rural residential. Item 6: Commercial activities and uses north of Interstate 90 are not contemplated in that plan. Item 7: The new development as approved by the Zoning Officer would be compatible, and what I mean by that is all of those activities except the retail portion of their project are compatible with agriculture and residential activities supported by the plan.

Commissioner Evans: And yet, I want to make sure I understand ...

Tim Hall: And yet, the retail portion, and I'll get to that again, is what is causing the denial. That portion of their project submittal is the one thing that is not addressed specifically in the Butler Creek Plan. The notion of a commercial activity that is not somehow linked to agricultural activities generated from that facility is a commercial venture of a different sort and therefore not supportable by the plan.

Commissioner Evans: Okay, so I would like to clearly understand. If they grow zinnias out there and they want to sell zinnias to me, it's okay if they put them in a pot to sell it to me, but they can't sell me the pot separately. Is that correct? Sorry guys, but I want to understand this.

Tim Hall: Well, I'm looking at our counsel, but my notion is that if that, if they sell us something they've grown on the site and is part of that operation, they put it in a pot in order to grow that, then they can sell that to us. If they sell garden tools and other stuff and pots separately for me to take home, then they become a commercial venture of a different sort, and that's what we're finding trouble with compliance with.

Commissioner Evans: Thank you. I just want to understand it.

Tim Hall: Lastly, Item 10: The Zoning Officer has also found that selling of products not grown on the site and the storage of landscaping and irrigation equipment used off the site are not consistent with the Butler Creek Area Comprehensive Plan. So we concluded that it's not consistent. The map clearly shows that the location in the Butler Creek Valley is for agricultural and residential uses, specifically calling out as rural residential, I believe one dwelling unit per 5 to 10 acres. Certainly the caretaker's residence will, and other operations accessory to the agricultural activities meet that test. So we determined that, the conclusion, therefore, is the Butler Creek Plan still supports agricultural and rural residential activities. Lastly, I'll wrap up here. In addition, we also used Resolution No. 83-99 in determining compliance or compatible uses within 300 feet of an applicant's request. And in doing that test, 300 feet from the boundaries of the 6.33 acre parcel, we found that 50% or more of the adjacent uses were not compatible or similar types of uses and so that to, that test that we are required to use, did not find compliance for a retail or commercial venture at that site. I'll go on a little bit further. In a meeting with the Ibeys and Ron, we have been pretty forthright in the notion that a commercial activity in the site would be problematic and much to their credit they have attempted to work with us and we're just moving along with the public process here. We recommended long ago that if the intent was for a commercial activity at this site, that we consider a Comprehensive Plan Amendment, which is the appropriate vehicle for a public process that would consider commercial uses in the Butler Creek Valley. It should be noted that that public process may, may result in recommendations for land uses that support or don't support commercial in that valley. And that's yet to be determined. That public process and consideration before the Consolidated Planning Board and the Board of County Commissioners would take some time, but it would be an open and public discussion. There is a fee of \$6,000 that is currently within the fee schedule of Missoula County, through our Planning Office, for such Comprehensive Plan Amendments. And, I think, for that reason, as well as some others, the counsel with Ron, they have decided to proceed ahead with this appeal and see where that leads us. All that said, the Planning Office still feels that we cannot support the commercial and retail venture at this site north of the Interstate and the Butler Creek property and so we would continue to deny the building permit application as long as the retail establishment is a piece of the application.

Acting Chair Carey: Thank you, Tim. Other testimony? This is a public hearing.

Ron Ewart: Good afternoon, Ron Ewart, Eli & Associates. I'd like to thank Tim for all his work on this. Tim is correct, he was forthcoming with us all along and he's been consistent. Anyway, we do appreciate the opportunity to come before you regarding this appeal. Basically, the reason we're here stems from a difference of opinion regarding whether or not this proposal complies with the Comprehensive Plan. We feel that it does comply with the Comprehensive Plan and there are good reasons for that. Again, what I'd like to do is to cover several points. Again, I apologize if I'm going to cover something that you've already heard or that you already know or have read, but I think it's important that the information that I do have gets put out and into the record all in one cohesive piece instead of having it in different areas.

The first thing I'd like to do is discuss the location, the design and the use concept of the proposal. The property will be 6.33 acres in size, divided from the Hanson Ranch. The Hanson Ranch is about 1,600 acres in area. The subject property is located in the far southeast corner of the Ranch, next to I-90, next to Butler Creek Road. South of the Interstate are DeSmet School, the Missoula Development Park and other light industrially zoned land. To the north and west of the ranch is a gravel quarry for Mickelson Rock Products. East of the property is Goodan-Keil Estates and to the north and east is Circle H Ranch. High tension overhead powerlines cross the property from east to west. The land is fairly level overall and Butler Creek is located in the eastern part of the property near the road. The property will be accessed by an existing gravel road that will be paved into the site. Ibey Nursery, a long time local landscaping, nursery and irrigation business, wishes to build a very attractive location on this site. They are planning a retail store, a storage building, three greenhouses and a small caretaker's home. The design concept is on the wall behind you. Of course, it might change somewhat, but the general idea is they have grand plans to beautify the site with abundant trees, ornamental shrubs and various ground cover types. There will be a winding gravel pathway so people may stroll about the premises and learn what various species look like. The riparian landscaping along Butler Creek will be beefed up, so to speak, so as to further protect the resource and further screen the site from Butler Creek Road. Inside the nursery retail store will be lush planting materials, a small fountain and waterfall, and it will be an enjoyable place to visit. The site, when complete, will look very nice and will help to make for a beautiful entrance into our fair city as use from the site will be pleasing as seen from I-90 and from Butler Creek Road.

Quality development standards will be implemented to ensure that site design, landscaping, area of riparian resource management, storage, lighting, hours of operations, weed control, signage and use are perpetually consistent with this proposal. These standards will be implemented both through covenants, development agreement and deed restriction on the use portion of the standards. Standards are listed and explained on Pages 5 and 6 of the submittal packet for the subdivision.

The property is unzoned in the County and is within the Butler Creek planning area. This proposal can be found to be in substantial compliance with the 1996 Butler Creek Comprehensive Plan Amendment. The plan lists 13 land use goals, each of which are addressed in some detail on Pages 8 and 9 of the submittal packet. Each of these 13 goals are met with the proposal. In the interest of time, I will not go into all of them, but I think it is important that I, at least, address three of them.

The first goal is to provide opportunities for public discussion and recommendations of specific land use proposals. The applicants welcome the opportunity to meet with area residents to discuss the proposal and any suggestions or concerns they might have. Prior to formal subdivision review and submittal, we held a very productive neighborhood meeting on September 15, 1999, at DeSmet School. Fourteen people attended and none appeared to voice any objections to this proposal. The main issues discussed pertained to wildlife, weed control and landscaping. Some people discussed the problematic intersection of Goodan Lane and Butler Creek Road, which is located about 400 feet south of the access to this site. As we believe may happen, that intersection will be alleviated at some point in the future with a new access for the Goodan-Keil folks at the Airway Boulevard interchange on I-90. We are willing to meet again with area residents at any time to ensure that this proposal becomes the best it can be to suit the area.

Another goal that I think we really need to talk about is Goal #10. It states that new development should be compatible with existing land uses, such as rural character and open spaces. The rural character of the Butler Creek valley will be preserved with this proposal and important open spaces will still be open because the location is in the far southeast corner of the 1,600 acre Hanson Ranch, with creek vegetation along Butler Creek to help screen buildings. The quality design and use standards will further the intent of this goal. To the south of this property are the Interstate, the Missoula Development Park and other industrially zoned property. We have residential properties, Goodan-Keil Estates, Circle H Ranch. As you know, on Circle H Ranch there is some high density zoning there and then there is some lower density clustered residential uses. This particular property would not be good for residential use because it is located right next to the Interstate and under high tension power lines. The proposed use would be compatible with the surrounding uses which include an Interstate and open farm and ranch land. There are some residences in the area, but only one residence within 1,000 feet of the subject property. Certain types of low key commercial uses such as neighborhood stores, office, etc., are compatible with residential uses. Landscaping and nursery businesses can be compatible with residential as evidenced by the situation of Caras Nursery next to many urban homes on South Third Street West in Missoula. The difference here, though, is that only one home is anywhere close to this property. The business will be well screened and access to the main road will be off of a secondary road.

The last important goal I need to speak to is Goal #11. It says promote the best use of land for residential, agricultural, commercial, industrial, open space or other types of development consistent with the goals of the landowner, residents and visitors. Due to location, the proposed use of a landscaping/nursery/irrigation business, which would be a combination of agricultural, commercial and residential use, would be ideal for this particular site. Due to several factors, it would not be good for industrial or most kinds of commercial uses, such as those in the lower Grant Creek area, for example. There is no direct Interstate access in this location, so increased commercial use is very unlikely. The important open space vistas of the Hanson Ranch will remain, while this 6 acres, located in the corner and not out in the central area of the fields, will be developed but also enhanced with abundant and beautiful landscaping. The proposal meet the goals of the landowner. We have met with and would be happy to meet again with residents.

There are a couple of reasons why these three goals are very important. Regarding the first goal, the Comprehensive Plan is supposed to be a consensus based document where the local residents are involved with its formulation and implementation. People of the neighborhood should always be invited to become involved in land use proposals. We have heard only good comments about the proposal from people we've spoken with, including the one person who lives across Butler Creek from the property. Goals #10 and #11 deal with land use and compatibility with surrounding land

uses. The Butler Creek Plan does not state where commercial land uses should occur, only that the best use of the land should be promoted and that all types of proposals must meet the goals of the plan. There may be an apprehension on the part of some because this proposal may represent a new type of land use in the Butler Creek drainage north of the Interstate, which could possibly lead to further commercial development such as that, again, in Lower Grant Creek. There are considerations here, though, that might lessen any such presentiment. First, there is no Interstate access to Butler Creek Road such as there is at Grant Creek, Airway Boulevard and the Wye. Commercial enterprises wishing to locate in this general area will normally choose one of these locations. Ibey Landscaping and Nursery has chosen this location because it provides them the space they need and it is central to their work areas. It's easily accessed by a paved road near a growing light industrial and commercial park with expanding, improved transportation systems. Again, the use for this parcel of land can only be that which is specifically being proposed, or if it is ever sold, then the use may only be the same, or strictly agricultural or single family residential. The issue of whether the proposal of compatibility with surrounding uses is also very important. It is important to determine the meaning of the word compatible. According to Webster's, it means capable of living harmoniously or getting along well together. The proposal is compatible with the existing development and the natural landscape. The Hanson Ranch is an agricultural, commercial and residential type use. The owners of the ranch grow products for sale and they live there. The proposed use is similar in many respects, although it will be more commercially oriented. Certainly, one would agree that both are compatible, especially since the proposed location is in a far southeastern corner of the ranch next to the Interstate. The proposal would certainly be compatible with the Interstate and the light industrial uses south of the Interstate. Adjacent to the east is one residence, and other residences are located further east and north, at distances greater than 1,000 feet. Even looking at all the area residential uses and locations, it is reasonable accurate to state that the proposal and the residential uses would be compatible.

Page 54 of the plan is a map of the study area showing a shaded area labeled "Rural Residential Area = 499.16 acres (one dwelling unit per 5 to 10 acres)." I've blown that up and put it on the map, it's on the right. Unshaded areas within the study area equals Open and Resource land. The purpose of this map is not stated, but it may be surmised that it recommends densities for residential use. This map does not take into account the Dodd Ranch 20 acre parcels, the Circle H development which includes high density zoning in the lower portion off Goodan Lane. It doesn't show Goodan-Keil Estates, which contains about 70 lots, most of them around 5 acres. The map does not recognize the many existing smaller tracts of land in the middle Butler Creek area. The map does not show the property south of the Interstate to Highway 10 and east of Butler Creek as being light industrial, which it is zoned. The map shows all of the study area outside the shaded portion as Open and Resource, one unit per 40 acres. The only other density, or the one unit per 5 to 10 acres, shown on the map is for existing agricultural bottom land. This map is a carry over from the 1975 Missoula County Comprehensive Plan. Under recommendations for Goal #10 the plan states "areas presently designated for densities of one house per 5 to 10 acres in the 1990 Comprehensive Plan Update should remain in effect. Determination based on soils analysis should act as a development density guide for the area." Now, this is the only place in the plan where the land use map is referenced. In effect, the proposed residential density is not to be higher than recommended. Notice also that the language has to do with residential density, not with land use. It would be somewhat of a change in the existing use for this proposal, whereby an increased commercial aspect would be added to the existing commercial use of the property. However, nowhere in the plan does it state that a commercial type use should not be allowed here. Any use or development must be well planned and must meet the goals of the plan. The one dwelling per 5 to 10 acre classification is in regards to potential residential density of a large ranch bottom land and does not restrict land use to residential if one takes into consideration that Goal #11 of the plan promotes the best use of land for different kinds of land uses.

I'll try to simplify that by stating that we believe that this proposal meets the land use map because of the fact that the land use map is talking about residential densities and the plan does not state that land use shall conform to that shaded area, only residential densities should be 5 to 10 acres. However, even it were determined that the untitled map, which indicates very little in regards to today's condition, if you were to consider that were the rule of law, then still, Resolution No. 83-99, Paragraph 2C states "if the requested permit is for a use different from the designation on the land use map, but the use would comply with the land use goals, objectives or policies specified in the Comprehensive Plan, then the proposal would be in compliance with the Comprehensive Plan." We have conclusively shown, by examining each goal, that the proposal does meet each and every goal specified in the plan and the proposal will adhere to each applicable recommendation. Regarding land use, the language of the plan is quite general, but does appear to allow for responsible land uses. For example, the plan does recognize that the lower portion of the study area could be used for other than strictly agricultural or residential uses as it states that this portion could serve future public needs, such as a school or a fire station. The plan states "the land in the Butler Creek and Lavalley Creek drainages has potential beyond present uses, and acknowledges the growth and land use changes taking place in the lower Butler Creek drainage." It further states "any changes in the present land use should take into account the sensitivity of the resources on and adjacent to the proposed site." This proposal does take into account those resources. Stated also is that agricultural operations should be encouraged to continue to operate in conjunction with limited development proposals. Again, Goal #11 promotes the best use of land for different types of use, including commercial. If any kind of commercial use, besides strictly agricultural, were to be located in the Butler Creek drainage north of the Interstate, there could be no better location than here, in the lower portion, next to the Interstate, on well-landscaped level ground.

Okay, I'm winding down, by the way. I'd like to briefly address the staff report. Page 4 of the report under Comprehensive Plan compliance, findings of fact, Resolution No. 83-99, Guidelines for Determining Comprehensive Plan Compliance, Paragraphs A and C are listed. We believe this proposal meets both paragraphs. Paragraph A, which states in part that the use will be in compliance so long as it's included among the activities designated by the plan, Paragraph A does not mention a land use map. The plan itself would allow this type of activity if all the goals are met. The map and the plan has to do with maximum residential densities, if residential is done. Paragraph C states in part that if the requested permit is different than the designation on the land use map but the use would comply with the goals, the proposed use would be in compliance. Under findings of fact no mention is made of compliance or noncompliance of this proposal with the goals contained within the plan. The first four findings are simple facts regarding the proposal. Finding #5 states the property proposed for the use is identified in the Butler Creek Plan as agricultural and rural residential. The finding appears to take a literal and strict interpretation of the untitled map and the untitled map only, as if it were a zoning map, making no mention of any of the other information contained within the plan. Number 6 states that commercial activities and uses north of I-90 were not contemplated in the plan. After reading over the plan several times, I've not found where it states commercial use was or was not contemplated north or south of the Interstate. The untitled land use map shows nothing in regards to commercial or any other type of use, it only indicates maximum residential densities for the Hanson Ranch bottom land. Numbers 9 and 10 state that the use for a caretaker's residence, plant nursery, storage buildings

accessory to the nursery and a retail store selling products grown on site it consistent with the plan but that the selling of products not grown on site and the storage of equipment used off site are not consistent with the plan. I feel that we've come to a very fine line between what would be allowed and what would not, indicating to me that we are at least quite close in our conclusions. Ibey's business would depend upon selling products grown both off site and on site, much like Caras Nursery's will, and they take their equipment over the entire community to landscape, irrigate and help beautify the whole Missoula area. The December 1, 1999 OPG memo states the applicants have offered many ways of mitigating their potential impact on that neighborhood, all of which are thoughtful and beneficial for their operation and surrounding uses. However, throughout the entire Butler Creek planning process, no mention was made of commercial operation extending into the agricultural valley. The intent of the Butler Creek Plan was to provide an opportunity for the neighborhood to discuss their future, given certain changes that Missoula County had initiated at what is now the Missoula Development Park, including extension of infrastructure and the Interstate 90 interchange. Other planning efforts in the Missoula valley, including the Open Space Plan and the 1998 Urban Plan Update, have identified the Butler Creek valley as inappropriate for commercial use. Although the applicants intend to offer services that provide a fit in the valley, the use is in part commercial. Okay, in response I do appreciate the acknowledgment of our efforts to mitigate potential impacts and to make this as good a fit as possible for the area. Again, I've looked through the Open Space Plan, back and front, as well as the Urban Area Plan, and I personally have not been able to find any specific goals or statements otherwise to that effect. The Open Space Plan identifies a portion of the valley as part of our Open Space system. The subject property is not a cornerstone or potential cornerstone, but we all know and hope that the Hanson Ranch will continue as a ranch and will remain open. The sale of the 6.33 acres for the proposed use will help provide operating capital for the ranch. The owner of the ranch has no plans for development and would prefer to keep the ranch open and agricultural if financially possible. This particular property is located in the far southeastern corner of the ranch, next to the Interstate. This proposal would not endanger our Open Space system. What would endanger the open space look of this ranch bottom land is if one home per 5 to 10 acres were developed as the untitled map in the Butler Creek shows. The only particular mention I have found in the Urban Area Plan in regards to the land is in regards to the land use map showing the same, one per 5 to 10 on the bottom land between Butler and Lavalley Creeks. Under the purpose statement of the Urban Area Land Use Map, it states that the map is not a zoning map and any decisions based on the designation should consider site specific conditions.

Okay, in conclusion, this proposal can be found to be in substantial compliance with the 1996 Butler Creek Comprehensive Plan Amendment by examining the goals and recommendations of the plan in light of all the elements of this proposal, the location and existing circumstances. The untitled map that is in the 1996 plan was drawn 25 years ago. It does not show the existing conditions and really doesn't offer any planning guidance. I don't believe that the owner of the ranch would want to develop his bottom land into one unit per 5 to 10 acres. One of the recommendations to help implement Goal #10 of the plan mentions that residential densities as shown on the map should remain in effect. The residential density of this proposal would be consistent with the map. The plan does not state that land uses must conform to the map, but it does promote responsible development that respects the natural environment, agricultural resources and open space. Goal #11 in the plan promotes the best use of the land for residential, agricultural and commercial use, considering the goals of the landowner, residents and visitors. The plan recommends new development to be compatible, which means harmonious, with existing land uses. Nowhere in the plan is it stated or inferred that this particular proposal would not be allowed. The proposal complies with every stated intent, goal and recommendation within the plan. Comprehensive Plan compliance on unzoned land for building permit issuance can be met because the goals and recommendations of the plan are met. Thanks.

Acting Chair Carey: Thank you. Any other testimony or presentations?

Tim Ibey: Yes, I'm Tim Ibey. I'm a partner with my brother in Ibey Sprinklers and Landscape and we brought this motion to the table, I guess. The one thing that I guess stood out to me when we were told that we would be allowed to have the nursery and the buildings out there was simply the fact that we're not trying to build a K-Mart out there. We're not a convenience store. It's very specific, the products that we're selling. As far as a major commercial outlet, we're not. We support ourselves with the nursery, the nursery product with our landscaping. We would, however, like to offer some of those for sale. We also need a spot for our sprinkler company because basically Earth and Wood and Caras both have their sprinkler companies there in their same areas, they live out of the same building, so to speak, and they kind of go hand in hand. I would hope that we would be able to reach an agreement where we could have, you know, our complete nursery and sprinkler business all in one area. I think that we would be an asset to the Butler Creek area in that we will take care of our area and make it look good and also offer the public a new place to come out and buy nursery products. And once again, like I say, we aren't going to be a K-Mart or a Sinclair gas station or something like that, we're very specific in what we sell and we have set forth, in-between my brother and I, that we are going to be the best looking nursery in the County. So, I, you know, I would hope that that would be involved in your thought process as you look at this. Thank you.

Acting Chair Carey: Thank you. Yes, Commissioner Evans?

Commissioner Evans: I have a question for you, and this is kind of from left field, but I would like to know, because I've heard that you made an offer to Missoula County on some Development Park land. I want to know if that's true?

Tim Ibey: Yes I did. In fact I was looking at the proposal the other day, thinking that was too bad that that didn't go through.

Commissioner Evans: It was never brought to the Commissioners.

Tim Ibey: I took it to ... Olegard?

Commissioner Evans: Orin Olsgaard.

Tim Ibey: Olsgaard. He said that he was interested in doing something in the, basically in a trade situation. We looked at that piece of property across from DeSmet School toward the airport. I think it was about six or seven acres there. It was, had a bunch of different, it was crisscrossed with utilities and those had to be moved and for our use they didn't have to be moved and so I said, okay, well, to make this thing more saleable for you and to increase the property values, we'll go in and we'll put in the boulevards, starting at, I believe it's Expressway there, all the way to Butler Creek Road. I think it was 20 or 25 feet wide with the sprinklers and with the trees, the boulevard trees in. And so we used the same basic calculations that were used on the bid that won the Reserve Street boulevard to do that boulevard and it came up to within,

you know now I can't remember, but it was very close to what their asking price was for that piece of property. Only they wouldn't have had to move the utilities, which was, as I understand, a relatively expensive thing to do. And he looked at it and said, no, we need cash.

Commissioner Evans: I want you to know that was never brought to the Commissioners for our consideration.

Tim Ibey: I didn't know that, I was told that was my route to go and he would accept or deny any proposals and so that's where I was at.

Commissioner Evans: Okay, well I just wanted to understand the situation because I had heard it and I wanted to clarify it. I have a question.

Tim Ibey: We would have rather had that piece of property actually, but we aren't large enough to take on, assume a \$270,000 debt, so.

Commissioner Evans: Okay, I have a question for Ron or Tim, either or both. You helped to draft that plan for the residents of Butler Creek and I gather you've read it numerous times. Is there anywhere in the plan that precludes, period, any commercial. Or does it say somewhere in the plan that somewhere in the Butler Creek Planning Area there can be commercial?

Tim Hall: It's been some time since I've read the plan. I believe there might be some discussion about potential home occupation in terms of commercial, which is a pretty standard statement that we often put in areas that are primarily for residential use, but the, and I wrote the letter that Ron recited as part of the testimony, in part, reflecting on the public process and not so long ago a hearing in this very room where folks never contemplated commercial development of this sort in the valley. So that is the primary reason it was never really discussed in the plan itself. The plan for the most part is a policy document, it's been stated the map was resurrected and restated here not to amend but to simply state with the newest policies, what the land use recommendations from, I believe the 1990 plan recommending for the area. And that was residential and rural and agricultural uses.

Commissioner Evans: Thank you. And Ron, can you, and I'd like a brief answer, can you find anywhere that says in the Butler Creek Plan that commercial is allowed, anywhere?

Ron Ewart: Yes, Goals #10 and 11 which I discussed in detail and I won't go into them again.

Commissioner Evans: No, I don't want to say best use of the land, I want to know, is the word commercial anywhere in the Butler Creek Plan.

Ron Ewart: Goal #11 states "promote the best use of land for residential, agricultural, commercial, open space and other types of development consistent with the goals of the landowner, residents and visitors. So it's fairly broad.

Commissioner Evans: Thank you. I just wanted to know if that word was there because if indeed any commercial was contemplated in that area, the only place that it makes any sense whatever to me, is at this location. And that's where my dilemma is here, I believe, one, I would much rather have a comprehensive plan amendment that brings to us clearly the attitudes of the folks up there so that I know that the plan is such that it specifically allows this kind of use. I don't want to turn down your request but I really believe that the staff is right on this one, that it does not contemplate this kind of commercial. Now, I'd be happy to try and find some sort of a compromise here. \$6,000 to bring a comprehensive plan amendment is, in my mind, an onerous amount of money. On the other hand, we tell Planning and Grants and every other department that they're supposed to bring in enough money that their costs are covered. So, here we have \$6,000 that keeps you guys from wanting to bring it to us, which I think is the right way to do it, and we've got staff time that probably equates to \$6,000 to do the job. So, I really have mixed emotions about this because I'd like to provide the mixed use that we talk about in Smart Growth all the time and yet preclude every time something comes to us that has a nature like this that's confusing. End of speech.

Acting Chair Carey: Well, I can, I agree with much of what Commissioner Evans said, particularly the fact that I think we ought to engage in that process of considering how to amend the comp plan. My fundamental difficulty really is, is that if we're going to have plans, then we need to be able to stick to them in order to direct the nature and extent of growth. And it seems to me that there's no point in having a plan if we're not going to follow it. And it also seems to me that once we cross a line between certain kinds of very minor commercial activity to a different level of commercial activity then we've opened the door to a lot more commercial activity simply by virtue of the fact that, well, if they're there, why can't I go there. So I'm having a problem with that. We've got this opportunity at our park, I mean it's a shame that something like that can't be worked out and it's also a shame that we can't find a way to keep somebody who wants to farm in farming. So, we're just in a tough place. But I agree, I'm for upholding the staff's report on this.

Commissioner Evans: Tim, is there any compromise you can think of here, please?

Tim Hall: I'm not in a position to make a compromise on the floor but I think that, I mean, the Commissioners can certainly request that something be considered through the Planning Office and maybe counsel and the developers. I cannot promise that any resolution would occur, but certainly you could direct that discussion to happen and maybe bring something back before you for consideration and see if it could be worked out. That much I can promise. We can have a meeting and we can talk about alternatives. The ultimate decision as to what we do would most likely come down before your Board.

Commissioner Evans: Is there some way you can, is there a medium, a middle ground here between a comprehensive plan amendment, some way to determine more than a school meeting with 14 folks, that the public who helped to put this plan together does or does not have a problem with this concept. Because, like I say, if I want to buy some zinnias or some daffodils or whatever and you've got them in a pot, you have to provide the pot, and selling me the pot by itself versus selling it to me with a plant in it is such a fine line that I'd like to find some compromise here. Is there any legal thoughts here, ma'am?

Colleen Dowdall: The only thought I had, I had before you made this last statement, and that was that a nursery business that is more limited than is contemplated here is something that we can permit as an agricultural use. The comparisons with, for instance, Caras Nursery, is that Caras is in a zoned area and they are a legal non-conforming use because that use pre-exists zoning. But we have lots of correspondence over the years regarding what is appropriate in a nursery to make it an agricultural use and the additional retail business of selling things that are shipped in to the store for resale, whether it be plants or gardening tools or pots, constitutes a retail or commercial use as opposed to an agricultural use.

Commissioner Evans: Is there a middle ground between a comprehensive plan amendment and a denial here?

Colleen Dowdall: As I said, just, if the developer was interested in scaling back their proposal so that it was strictly agricultural that would be a compromise on their part.

Commissioner Evans: Isn't that what they've submitted anyway?

Tim Hall: I want to bring up one other point. A, I don't think that's what they've submitted because, as Tim says, they'd like to be on par with some other competitors, which offer other services, other materials, and I can respect that. But there is another facet of the proposal that is in non-compliance and that is that the portion of their business, and I believe the sprinkler business is what you're known for, and the landscaping business is what they hope to become, and I'm sure they'll do a great job at it. But the sprinkler business, because it too is a commercial venture where they generate revenue around the valley or in the region, for them to store materials that they generate revenue off of in another location isn't considered agricultural. Whereas ...

Commissioner Evans: And yet, sprinkling is considered agricultural.

Tim Hall: Sure, and Paul storing his stuff on the ranch is agricultural, but to take that material to somewhere else or store it and use it was determined to be also not in compliance. So, these are pretty significant modifications. I think we would undertake a, you know, some discussion, but it's really on Tim Ibey and his brother's shoulders at this point to see if that's acceptable. I'm, we really wanted to work with these guys, we wanted to do a Planned Unit Development to restrict their use and the type of use that would occur there. In doing the assessment to develop a PUD at the site, it needs to be in compliance with the comprehensive plan. So, we can't, we end up being back in the loop of even if we were to zone the property, the zoning would need to be in compliance with the comprehensive plan. So, we need to amend that comprehensive plan. We end up right where we are. And so, my sympathies, public process being what it is, we've come to this place.

Commissioner Evans: What do you want to do?

Acting Chair Carey: I want to urge them to go ahead and look into having a comprehensive plan amendment.

Commissioner Evans: Is there some way you can do a modified comprehensive plan amendment that doesn't cost them \$6,000?

Tim Hall: As I said, I'm not in a position to do that, but I think that you could instruct the director to entertain that discussion and we could come up with some alternatives.

Colleen Dowdall: I think the Commission would be in the position to do a partial fee waiver. They are your fees that you adopted. Any fee that is charged by OPG is approved by you.

Commissioner Evans: The dilemma I've got from that is our budget is like Swiss cheese, we tell people, the County departments, that they need to charge what it costs to do something. However, and I don't know what this process cost you. Let's say it cost you \$1,000. You've already spent a lot of time and a lot of money and some of that is still usable in the next process and maybe we could deduct what you've already paid from the future costs, if you're even interested.

Acting Chair Carey: I think, though, that you're right. I was thinking about the budget implications as well. Because if we do it for one, we're duty bound to do it for others and it's a slippery slope to significantly reduced revenues.

Colleen Dowdall: I do think the fee that we have established, however, is not one that's rationally related to any particular, the extent of the amendment or the amount of staff work that's required. For instance, if we do a subdivision, we charge a certain fee and then additional money per lot, so there's some rational relationship between the amount of work that has to be done. In this case, we all know what Ron did his masters thesis on, comprehensive planning, and he's perfectly capable of writing up an amendment and presenting it to the Planning Staff for their review. So it may be that that fee schedule needs to reflect more realistically the involvement of the staff.

Commissioner Evans: Well, let's ask Tim what does Tim want to do.

Tim Ibey: Well, you know, what do I want to do? I want to go out and start building today, okay. In reality, what we've run up against is that time and time again is just kind of a brick wall here. I think last time we were in here, which was just a couple of weeks ago, we're now looking for a way to do a floodplain review of sorts. Okay, so \$5,000 there. And now we've got a new comprehensive plan, \$6,000 there. I've got Ron for, I don't know, \$40,000 or whatever he is, you know, and then I still have to pay Paul and at some point in time I can't do it. You know, it's not, when we first went in to meet with OPG, the first thing that was laid out on the table was, well you shouldn't be here, you should be over here, and I'm going, well that's a kind of a conflict of interests here, because over here I already tried to get over here, okay, I tried to get into the park, I tried to be in compliance with what that was developed for, and I got turned down. I didn't get turned down once, but I got turned down twice, because I came back with a second plan to that man also and I've got those written up on my computer, they're still there. Because we really wanted to and we say where we could really do a service to the County and get ourselves a place to do business. So, we still like that area out there and so then we talked to Paul. But at some point in time I have to say that, you know, I'm kind of a labor oriented type of a fellow, I like to work for my money and that's how I get my money and that's the way I've been able to build my business is through hard work. And so, whether I did it for the County and worked hard for them to beautify that boulevard or whether I work hard for other people and come up with enough which works out to be about the same amount of money to pay Paul and the peripheral things that it takes to make a subdivision, it doesn't matter to me. But I think that at some point in time, I'm only able to

pay so much and do so much. And I think we've almost gotten to the point where I have to step away because I can't afford it.

Commissioner Evans: My concern, Tim, is that the plan that was done by the folks in Butler Creek, took a long time, a lot of input, it wasn't just thrown together, and that particular site, or no particular site, was identified as logical commercial. To me that's the only site that's logical out there for commercial. And I'd like to find a way to approve this for you, but I can't.

Tim Ibey: Ah huh. Well, I would like also to reiterate the fact that it is under power lines, that particular area is under power lines, high tension lines, I don't know how much high tension it takes to do the things that I've watched on "20/20" and "60 Minutes," but, and secondly, if I was doing their job, the last place that I would put homes is down on the agricultural property. As far as I'm concerned, we should be leaving the areas that have top soil and are agriculture and have the availability of having agriculture on them should be the last places that we're putting neighborhoods, but I didn't do the plan and I don't know the process because I'm not of that education. But, you know, I'd have put them up on the hills a little bit rather than right up Paul's only area to grow grass. So ...

Commissioner Evans: Do you guys want to work with the Planning Office and see if they can come up with a compromise that they feel okay about, that you feel okay about, and that we can, in good conscience, pass. Or do you want us to simply uphold the, regretfully, uphold the recommendation that it's not in compliance.

Tim Ibey: You know, I don't know. I've kind of got to talk to my brother about this cuz now we're looking at an additional, by the time we'd finish with this, \$12,000 to \$14,000 plus whatever we're going to have to pay Ron to do this and I think that it's probably taken us out of the picture. And so, really, I think that my only avenue, if I want to continue to pursue this, is to, I think there is one more appellate process and that could be that I go to a District Judge and he reviews it.

Commissioner Evans: And that won't be cheap either.

Tim Ibey: Well, it might not be cheap, but it probably won't be \$14,000 or \$15,000.

Commissioner Evans: You know, Tim, I do my best to pass things ...

Tim Ibey: No, I understand that, I'm ...

Commissioner Evans: ... what I'm going say, is I don't think you'll win in court, because I don't think there's enough ambiguity here for you to win. That's my belief. I'm sorry, I shouldn't be advising you on court stuff.

Tim Ibey: Well, no, that's fine, I mean I've just read it over and over and over again and I can't see where we're that far out of bounds. I don't see where we're that far, I don't think we're out of compliance. I think that we are actually, have gone out of our way to make sure that before we even started this process that we had something that was viable. You know, I think we did a lot of research and a lot of homework before we started because I don't like to fight uphill battles. I've always found that they're very tiring and expensive. So, that wasn't what I set out to do.

Commissioner Evans: What do you want to do?

Acting Chair Carey: I wonder if counsel will tell us if whether we need to take an action here? It seems to be like we do.

Colleen Dowdall: Yes, you need to either approve it, or uphold the denial or reverse the denial.

Commissioner Evans: Or take a delay.

Colleen Dowdall: You can do a delay if you wish. I'm not sure why you would want to do that, but ...

Commissioner Evans: In case they want to work more with the Planning Office.

Colleen Dowdall: Okay, well.

Commissioner Evans: So if that's where you're leading, that's still a possibility.

Acting Chair Carey: Yeah, if you think that you'd ...

Tim Ibey: Why, I, you know, I don't mind working with anybody. I spend time working with everybody, so, you know, that, I would rather do that than be denied. I'd like to try something, but, I also would like to reiterate the fact that at this point the money situation is kind of taking me out of it.

Commissioner Evans: Is there any point, Tim, is there any point, is there any room for manipulation here. If not, I don't want to waste their time and their money.

Tim Hall: Well, let me, once again, I think that what we would need to do to determine a fee, if the Board were to instruct the Office to reduce the fee for a particular circumstances would be to outline the necessary process and features that we would need to consider for the amendment. And part of that, if Ron were to undertake that process, would be some costs that we would agree on. And I don't know where the number \$6,000 came from, it's in the fee schedule, it's been adopted. Perhaps we could come up with a process that was less than that, bring it before you, I don't know if it would have to go administratively or through a hearing, to consider a reduction in fee. Now, I don't know what number will strike a number, \$3,000, \$1,000. Tim's telling us anything is probably, or something, is going to put him over the top. And so, I'm willing to entertain that. I really think that the ball is in your hands if you're willing to allow us to engage in that discussion.

Acting Chair Carey: You know, I'm a bit uncomfortable with, there's almost a cart before the horse thing here. If we're going to take a look at how we structured fees, then that's what we ought to do, rather than a kind of case by case sort of

well, let's see, in this case it's going to cost \$3,000 and well, in this case, maybe it's \$10,000. I'm a little uncomfortable with doing business that way. We ought to have a reasonable, justifiable fee and stick with it.

Commissioner Evans: And it ought to be based on actual costs.

Acting Chair Carey: Yeah, yeah. And who knows, it could be higher than \$6,000, if, you know, somebody wanted to dig in and go to work and spend hours of time, you know, there's a lot of variables that I don't understand at this point.

Commissioner Evans: So, supposing we uphold the decision of the, that it is not in compliance with the comprehensive plan and we do that today and they decide that sometime next week they want to reconsider this or work more with you folks, are we going to make them go through the whole lousy process again. Or can we ... sorry about that, I'm sorry, I shouldn't have said that. The whole wonderful process. Our counsel is having a stroke ...

Colleen Dowdall: No, wonderful or lousy, I think that we always take requests for reconsideration.

Commissioner Evans: What I want to know is it going to cost them more money and more time?

Colleen Dowdall: It's going to take more time but it's my opinion that we don't have to go back and say we've turned you down, reapply. But we always, as long as I have done this work, we have always been willing to hear a request for reconsideration.

Commissioner Evans: Okay, I'm, regretfully and you have no idea how regretfully, making the motion that we uphold the recommendation or the decision of the Planning Office that this is not in compliance with the Comprehensive Plan.

Acting Chair Carey: I'll second that motion. All in favor?

Commissioner Evans: Aye.

Acting Chair Carey: Aye.

Commissioner Evans: This will give you time, Tim, to go talk to your brother to see if there's anything you guys can come up to talk to Tim. I hope you can find some way that will make this possible because I think it would be an asset out there but I just don't think it meets the plan. I'm really sorry.

Tim Ibey: Now, do I have to pay another \$500 to come in.

Commissioner Evans: No.

Tim Ibey: Okay. I'm mean, it's \$500 here, \$70 there, \$1,000, \$1,500.

Commissioner Evans: No you don't.

Acting Chair Carey: Other business before the Board? Seeing none, we're in recess.

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

THURSDAY, DECEMBER 23, 1999

The Board of County Commissioners met in regular session; all three members were present briefly in the morning for signature items, then were out of the office for the rest of the day.

Memorandums of Agreement – The Commissioners signed three Memorandums of Agreement with the following organizations:

- 1) Missoula Parks and Recreation Department, funded by the Office of Juvenile Justice, Parks and Recreation, to provide recreational and literacy activities to participants in Drug Court in order to build self-esteem in at-risk youth by providing new activities in which they can participate and be successful. The amount shall not exceed \$5,800.00. The term will be October 1, 1999 through September 30, 2000.
- 2) Turning Point, Western Montana Mental Health Center, funded by the Missoula County Community Incentive Project to provide for the facilitation of the Reconnecting Youth Program at the Boys and Girls Club and the Common Sense Parenting Program on-site at Turning Point and Missoula Indian Center. Also, for the extension of hours of three prevention specialist half-time at Seeley Lake High School, the facilitation of tutoring programs at three middle schools and all three Missoula High Schools, and the coordination of the evaluation efforts and data input required by the grant. The total value will be \$127,879.61. The term shall be October 1, 1999 through September 30, 2000.
- 3) Family Basics WORD, funded by the Missoula County Community Incentive Project, to provide for the implementation of the FAST Program in four targeted elementary schools and for the employment of a Native American Family Advocate who will provide outreach and home visiting services to Native American families in the Missoula County Public School District 1. The total value will be \$30,947.50. The term of the Agreement shall be October 1, 1999 through September 30, 2000.

Annual Report – Commissioner Evans approved the Annual Report for the U.S. Department of Housing and Urban Development required to continue the receipt of grant funding for transitional housing provided by the Missoula YWCA. The funding level will be \$35,313.33 for FY00. The document was returned to Nancy Harte in OPG for further handling.

Board Appointments – The Commissioners made the following Board appointments:

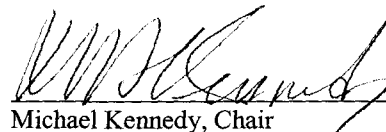
1. Isabel A. Singer to a one-year term as a member of the Missoula Aging Services Governing Board, to fill an unexpired term that will run through December 31, 2000.

2. John Fletcher to a one-year term as the "3rd alternate member" of the Missoula County Board of Adjustment. The term will run through December 31, 2000.

FRIDAY, DECEMBER 24, 1999

The Courthouse was closed for the Christmas Day holiday.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, DECEMBER 27, 1999

The Board of County Commissioners met in regular session; all three members were in briefly in the forenoon for signature items and were out of the office all afternoon.

Claims List – Commissioner Carey signed the Claims List, dated December 27, 1999, batch numbers 386, 397 and 398, with a grand total of \$58,108.15. The Claims List was returned to the Accounting Department.

Agreement – Chair Kennedy signed an Agreement with the Montana Department of Environmental Quality (DEQ) to inspect and test small Public Water Supply systems to ensure their safety. The total shall not exceed \$28,000.00. The services must be completed by September 30, 2000.

TUESDAY, DECEMBER 28, 1999

The Board of County Commissioners did not meet in regular session; Commissioner Evans was out of the office all day, and Commissioners Carey and Kennedy spent the day at the new Detention Facility.

WEDNESDAY, DECEMBER 29, 1999

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

Claims List -- Commissioners Carey and Evans signed the Claims Lists, dated December 28, 1999, batch number 399, with a grand total of \$4,940.17, and batch numbers 400, 401, 402, 404 and 408, with a grand total of \$95,275.10. The Claims Lists were returned to the Accounting Department.

Payroll Transmittal – The Commissioners signed a Payroll Transmittal for Pay Period 24, Pay Date December 3, 1999, for the amount of \$721,475.66. The document was returned to the Auditor's Office.

ADMINISTRATIVE MEETING

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

Professional Services Contract – The Commissioners signed a Professional Services Contract with LanAnn Bryant to provide TEG/TAP trainings (smoker education and cessation classes) at local high schools funded by a tobacco use reduction grant from DPHHS. Payment shall not exceed \$1,000.00. The term will be January 1, 2000 through June 30, 2000.

Professional Services Contract – The Commissioners signed a Professional Services Contract with Feather Sherman, who has completed Phase I of the Seeley Lake Youth Peer Education Project, to complete Phase II where students will develop a dramatic presentation from knowledge gained in Phase I and present it to middle school students. There will be discussion time to follow this presentation. The total amount for the Contract shall not exceed \$2,400.00. The term will be January 3, 2000 through May 31, 2000.

Closing Documents – Acting Chair Carey signed Closing Documents for Economic Development Revenue Note for Blue Mountain Clinic Inc. Project. The documents were returned to Dorsey and Whitney for further signatures and handling.

Agreements – The Commissioners signed two Agreements authorizing the remittance of tax increment monies to the Missoula County Board of Commissioners in the amount of \$35,954.58, and to the Missoula County Board of Commissioners for Countywide Schools in the amount of \$38,795.49. These amounts represent Missoula County's proportionate amount of the total tax levies lawfully set on property in the City's urban renewal district (URD I). The term for both Agreements shall be solely one year for the 1999-2000 FY. The documents were returned to MRA for further handling.

Agreement – The Commissioners signed an Agreement with the Missoula County Deputy Sheriff's Association to promote harmonious relations between the Employer (Missoula County) and the Association (Missoula County Deputy Sheriff's Association), and to establish an equitable and peaceful procedure for the resolution of differences; and to establish pay rates, work hours, fringe benefits, officer safety and other conditions of employment. The term shall be July 1, 1999 through June 30, 2001. The document was returned to Steve Johnson in Personnel for further handling.

Agreement Modifications – Chair Kennedy signed three Agreement Modifications with the Montana Department of Environmental Quality (DEQ) for the following:

- 1) A three-month extension for the Golden West Facility Plan, with total payment not to exceed \$3,548.00. The new completion date will be March 31, 2000.

- 2) A 30-day extension to complete the Lolo Facilities Plan, with total payment not to exceed \$10,815.00. The new completion date will be January 31, 2000.
- 3) A three-month extension for the El Mar Estates Facility Plan, with total payment not to exceed \$5,000.00. The new completion date will be March 31, 2000.

The documents were forwarded to DEQ in Helena.

Resolution – The Commissioners signed Resolution No. 99-099 to submit the question to create the Target Range Sewer and Water District, and to elect five directors upon approval of the District. The election will be held April 5, 2000 as a mail ballot election.

Other items included:

- 1) The Commissioners made the following Board appointments:
 1. Marilyn Cregg to a two-year term as an "alternate member" of the Missoula Aging Services Governing Board to fill an unexpired term through December 31, 2000.

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

PUBLIC HEARING – December 29, 1999
Further Hearing on Resolution of Intent to Consolidate the Offices of Clerk of District Court
and Clerk and Recorder/Treasurer

The Public Hearing was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioner Barbara Evans, Commissioner Bill Carey and Chief Civil Attorney Michael Sehestedt.

Chair Kennedy: Good afternoon and welcome to this special meeting that was called to finally consider the issue of the Clerk of District Court consolidation. It was advertised as a hearing and we expect to hear commentary, but before we open that public hearing there will be some comments made from here. First, I'd like our attorney, Mike Sehestedt, to give us a perspective on this before we begin the meeting.

Michael Sehestedt: Probably everyone here is familiar with the background. The Commissioners, acting pursuant to Article 11, Section 3 of the Montana Constitution and Section 7-4-2301 et seq. of the Montana Codes, held a hearing October 13, 1999. Following that hearing, on October 18, 1999, they determined to proceed with the consolidation of the office of Clerk of the District Court with the office of Clerk and Recorder/Treasurer. This particular hearing has been called to reconsider that decision. I believe the Commissioners will accept additional testimony and following the close of this hearing will decide to either affirm or reverse or, I suppose, modify their earlier resolution consolidating these two offices. I think with that preamble sets the stage.

Chair Kennedy: Any comments from, Barbara, are you going to make a comment, or Bill?

Commissioner Evans: Just to tell the audience that we have taken a look at it and we have heard what you said in the previous hearing. We've read your letters and so if you have anything additional you want to say, please do, but don't feel that you have to repeat everything because we've already heard what you have to say. You can say it again if you want.

Chair Kennedy: Bill, do you have any comments? Okay. So what we'll do is open the hearing and I would ask anyone who has any comment whatsoever on this particular issue to come forward, state your name, and we'd like to hear what you have to say. I would also ask, to reaffirm, reiterate, what Commissioner Evans said, that we have on record the minutes and all the comments from the last hearing and, so, if you're going to repeat, we'd like you to just keep it as concise as you possibly can. Thank you very much.

Reed Smith: My name is Reed Smith. I am a retired mining engineer living in Frenchtown, Montana. I spoke at the last hearing concerning this subject and expressed my objection to what appeared to be a very deceitful process conducted by the County Commissioners in making their decision. All of the statements of reasons for this action made by Michael Kennedy as reported in the Missoulian were very vague, conflicting and made no sense to me as an experienced office manager. After the last hearing and many conversations with County employees, including Commissioner Barbara Evans and the Chief Personnel Officer I became more convinced that there was a lot more to the issue than the public was being told. Commissioner Barbara Evans refused to allow me to see the Commissioner's file on this case and told me that the information the secretary had copied out of the file "was not all the information." She then stated that if I wanted to know what the rest of the information was I would have to come into her office and she would tell me. During that conversation she mentioned that I should find something else to work on because I was "not going to win this one." When I asked her about the rest of the information in the file, which I thought was a public file, she stated that she was not going to be the one to give it to me because she "was not going to be the first one to start slinging mud." She also said if I wanted the information I would have to get it from the Judges. I interpreted her comment about the mud slinging to indicate she was protecting the District Court Clerk, Kathleen Breuer, although the Judges and County Commissioners have stated, often, that this is not a performance problem. I have been unsuccessful in getting any information from the four District Judges except Judge Henson did call me in response to a letter that I had written to the four Judges. Judge Henson said he did not have any files and he did not seem to think there had been any significant problems with the District Court Clerk. He also made it clear he was not speaking for the other Judges. Judge Larson was reported to have said, in the October 10, 1999 Missoulian, that "the four District Judges support the consolidation." He also stated that other than the computer incident, which was resolved by court order, he would not specify any ongoing problems between the Clerk's office and the Judges. Also, he would not list any improvements he wanted to see in the Clerk's office. If there is nothing wrong or they can't tell the public what is wrong, I say "don't fix it." I stated at the last hearing that this was an issue of the balance of power between Judicial and the Executive branch of the government. I am now even more convinced of that. I believe there has been a concerted conspiracy by the County Commissioners, four District Judges and the State Supreme Court to embarrass the District Court Clerk and, thereby, facilitate their effort to eliminate her elected position and increase their influence over handling of the District Court records. After the court order was issued by the State Supreme Court, the state sent their computer technicians over to set up the computers and software that should have been done months before. If the State had done their job there would have been no need for the court order. Shortly after the last hearing on this issue, I asked the Chief Personnel Officer for a copy of the position

description for the new position. He informed me that he had not started working on it. My guess is that when the County finally got around to preparing the description of the new position, it did not pass the red face test and that is why we are here today. I consider every elected position in the County to be there for a purpose according to the wishes of the voting public. Each of these positions deserves the full respect and support of the County Commissioners. When I went to talk to the District Court Clerk about this issue I asked her if I could talk to her in her office. She informed me she did not have an office and we would have to talk in the hall. I found this to be disturbing in that she did not have a private place to talk to her employees, other managers, Judges or the public. For an office manager, not being able to have private meetings is a big disadvantage and is an unnecessary burden on her. It also reflects negatively to the public and County employees on the prestige or status of her office within the County government. The keeper of the court records is a very important position and should be treated accordingly. Every citizen that is or will be involved in a judicial proceeding is dependent upon the District Court Clerk for the accuracy and completeness of the records. The duties of the District Court Clerk are specified by State law. She is responsible for keeping the court records complete and accurate. On the other hand, the Judges are responsible for creating the records. These two functions should not be mixed. The Judges have to live with the records once they are created, just like the rest of us. Based on information I have received, I am proud of the fact that Kathleen Breuer has the courage to represent the public and stand up to four District Court Judges and three County Commissioners. I think this effort to eliminate her position will ensure her re-election next year if she decides to run. I'm not sure how three Court Judges and County Commissioner will fare in the election. My recommendation to the County Commissioners today is to reverse the previous decision to eliminate the District Court Clerk position. Give the District Court Clerk the prestige and status within the County government it deserves by providing an office for that person to privately meet with employees or other managers, Judges and the public. I am not aware of any other elected official in the County government that does not have an office where they can have private meetings. Maybe the Judges would be more likely to drop in and visit with the District Clerk to discuss the problems if there was a private place to talk. If they are too proud to go into her office to discuss the problems then maybe they should live with their problem or get the public to do something about it. In the mean time, maybe they could even invite her down to their plush offices to discuss problems they are having with the District Court records. This may go a long way toward solving the communication problem and may also help the County Commissioner and three Judges get re-elected next year. Also, if there are problems with the District Court Clerk's performance, that is the public's business. The Judges or the County Commissioners would be telling the public what is wrong. If there is a problem, I think it could then be solved without elimination of this elected position. Thank you.

Chair Kennedy: Thank you, Mr. Smith. Next person please? Is there anyone else who'd like to testify on this issue?

Susan Reed: My name is Susan Reed. I would encourage you to reverse your decision on the consolidation of these offices. A number of us were trying to anticipate the issues that would arise from the proposed consolidation and from my perspective the most important issue is money and salary equity I believe is an issue. We've run several scenarios with different assumptions to determine what the annual cost to the County of this consolidation would be. Additionally, I have run numbers with the help of Personnel and Medical Benefits to determine the actual cost of the payoff, which I'm not sure you guys know. Steve Johnson has performed an analysis that is somewhat parallel to mine. We used different methodologies and came out with slightly different numbers, but I know where his numbers are from and he knows where my numbers are from and it's okay. Based on the existing and, as I understand, yet unsigned contract, the cost of the buyout, the initial cost of the buyout would be \$87,714. And I will give you a copy of my computation. We have a few scenarios to talk about and again this was based on salary equity. The first scenario would assume that the supervisor of the Clerk of Court's office would replace the elected official and according to the contract that proposed salary of the supervisor would be about Kade's current salary. In order to maintain equity, we would bring the rest of the department managers or supervisors in the Clerk and Records Office to a comparable salary and presuming the current employees at their current salary, that would be an increased annual cost to the County of \$78,530. A second scenario would assume that the supervisor of the Clerk of Court's office becomes a Chief Deputy and that current Chief Deputy's position would be reduced to a supervisory level. It would also necessitate, because of equity, the creation of two new Chief Deputy offices, one in recording and one in treasury. The issue that I'm not going to discuss, I think that other people have discussed or will discuss, is how this interferes significantly with another elected official's management of their offices. That scenario would cost the County on an annual basis \$28,650. The third scenario would presume that this new supervisor in Clerk of Court would become a division head because it's my understanding that the management responsibility of this position would be under the authority of your Chief Administrative Officer. Again, the salary would be increased accordingly, but again for parity, all the division heads reporting to your CAO would increase equitably. The cost of that annually would be \$38,183. I just wanted you to be aware of the financial consequences of this decision and urge you to reconsider. Thank you.

Chair Kennedy: Thank you. Next person please?

Nancy Sweeney: Commissioners, my name is Nancy Sweeney and I'm the Lewis and Clark County Clerk of Court as well as president of the Montana Association of Clerks of District Court. Although I wasn't happy, necessarily, to travel here, I was happy to come here again to be able to address you on this very important issue and urge you to rescind the resolution to consolidate this office. I've delivered a letter and I hope you've all received a copy of that. I hope you'll refer back to my testimony from October. I think all of those issues are still very pertinent. And I'd like to address you just a little bit about the supervision in the Clerk's office and personnel and how difficult. I think there have been some situations that have arisen even since the last hearing that have caused difficulties for this County and I have to say it's not surprising to me and that I would anticipate that you would have similar situations arise when there is a confusion as to who actually is running the office. Any of us that have been a manager knows that discipline and personnel relations are difficult, in the best given circumstances, and certainly with no clear lines of authority here or many people being in an authority position to make decisions, only confuses it with this office. So I would encourage you to rescind this decision entirely, to restore the elected, independent Clerk of Court's office to help you administer this office along with the other offices that you have. If you have any questions, I'll be here after the hearing, I'd be happy to answer any questions you may have. Thank you so much for allowing us the opportunity to appear again.

Chair Kennedy: Thank you, Ms. Sweeney. Next person please?

Ron Erickson: Ron Erickson, 3250 Pattee Canyon, representing House District 64. The House of Representatives, through a particular motion for a study during the interim and I'm on the interim committee, which is to look at how District Courts, or how the courts in general are funded. And as we've had a few meetings, there are a couple of clear trends that I see, at least in that committee, it doesn't necessarily mean that we're going to have a law that goes that way,

but I do believe there will at least be an attempt for increased State funding for the courts. And one of the questions we turned out to be talking about around that committee meeting is how far down that funding will go, including whether the Clerk of the District Court should be funded on the State level. So, I'm here today not on one side or the other, but to go ahead and inform you that your decision may also affect how everything is funded in the future and basically I'm here to listen today. So, thank you.

Chair Kennedy: Thank you, Mr. Erickson. Next person please?

Kathleen Breuer: Good afternoon, Board of Commissioners. I just wanted to thank you for your decision to reconsider the consolidation of the offices for the Clerk of District Court and the Clerk and Recorder/Treasurer. I will not restate my previous testimony but will let it stand as presented on October 13, 1999. I do not have knowledge as to what may have prompted this decision for reconsideration. However, I do know that what you decide from this hearing, be it amending, revoking or affirming, it will be one that you, as a Board, will have to deal with. And I thank you.

Chair Kennedy: Thank you, Ms. Breuer. Next person please? Anyone else like to testify on this issue?

Tracy Morin: Thank you for giving me an opportunity to speak. I'm an attorney here in Missoula. My name is Tracy Morin. I just wanted to speak on a positive note that the Clerk of District Court runs extremely efficiently in Missoula and my concern about a consolidation is that one person trying to do two or three or four more jobs is just going to cause the attorneys in Missoula possible delays or problems and it just seems that if something's not broke, you don't fix it and the court right now runs extremely efficiently and I would urge you to rescind your previous decision.

Chair Kennedy: Thank you, Ms. Morin. Next person please? Is there anyone else?

Karen Orzech: My name is Karen Orzech. Thank you for having this meeting today. I was unable to be at the one in October, but I just wanted to just very briefly summarize what I think needs to be done here or what I think needs to be thought out before we proceed any further. When I look at the Clerk of Court and I look at the Treasurer, I see two very, very different people with different responsibilities. Responsibilities are just too much on both of those positions to be combined. I think it's an ill-conceived idea. I think that, as a Treasurer you have totally different responsibilities than you have as a Clerk of Court and I think to expect one person to do this is way beyond the capabilities of one person. I also think it's very important that this be an independent position. It's not a position to be controlled or influenced in any way by either District Court or the County Commissioners. If the position is not elected, then how do we get a person in there? Do we appoint a person? Who appoints that person? Is it the County Commissioners or is that person even interviewed? Who has control over that interview? So what we're looking at is, philosophically, we're looking at a position that needs to have independence, needs to have a strong person in that position and does not need to have any control, either from the District Court Judges or the County Commissioners, or anyone else for that matter. I think it belongs in the public's hands. Thank you.

Chair Kennedy: Thank you, Ms. Orzech. Next person please? Anyone else? Last call.

Doug Chase: Good afternoon, Commissioners. Doug Chase, Sheriff's Department. I'll let my previous comments stand, however, again, I would like to reiterate that, as I previously mentioned, we have received nothing but the utmost in service and accommodation in the Clerk of Court Kade Breuer and her staff. In one way or another, we interact with her office on almost a daily basis. I am really troubled by what appears to be attempted elimination of several elected positions over the last few years. This I don't believe is something in the best interest of the residents of Missoula County. It is also my understanding, and I may be incorrect, but that there was no mediation on this matter before the earlier position was taken. I know you strongly suggest this route before any of us Department Heads would go to the mat over a critical personnel issue. It is hard for me to conceive there couldn't have been some middle ground in this matter. I also think that there's been a very unfortunate victim in this situation other than Kade Breuer, and that's Clerk and Recorder/Treasurer Vickie Zeier, who has been thrust into an untenable position that has caused her a great deal of anxiety and concern. Thank you.

Chair Kennedy: Thank you, Sheriff Chase. Next person please? Is there anyone else?

Vickie Zeier: Vickie Zeier, Clerk and Recorder/Treasurer. As Doug has said, this has put me in a position that I don't find myself very wanted to be put in by any means. One other thing I would like you to consider, you've heard several of the issues that I believe are issues that need to be addressed. But the other issue is, if you do continue with this consolidation, when this office is elected needs to be decided and amended to your resolution. And that is not just for the present body and for me, as the Election Administrator, but for history down the road so that we have a trail of when this position will be elected. Thank you.

Chair Kennedy: Thank you, Ms. Zeier. Next person please? Anyone else? Okay, last call? Thank you very much. Then we'll close the public hearing and ask for response or comment or a motion from the Board.

Commissioner Evans: I have comments.

Chair Kennedy: Commissioner Evans.

Commissioner Evans: When we considered doing this, one of the reasons was because indeed there has been conflict between the Judges and the District Clerk of Court, and I want to reiterate again this was not the product of the District Court. They did not ask for this. They did not participate in this. This was a decision that was arrived at by this Board. A good share of that is due to the conflict between the two departments. As for slinging mud, I do not intend to say what those conflicts are and lay them at any particular person's doorstep. I'm not built that way. As for the record, the record is open. Anyone who wants to see any record we have can come in and see what there is. There is very little in the record other than the financial stuff and the resolutions. As for mediation, I wish I thought that that kind of thing would work, but you can't tell four District Judges and another elected official that you're going to subject them to mediation because they can tell you which side of the bridge to jump off of. That is not likely to happen. So, I am, after having heard the testimony, after having looked at this for a length of time, I've decided that it's a great idea, in theory. In practice it's lousy. So, I'm going to make a motion that we rescind our previous action, that we leave the Clerk of

Court's Office as it is and that I'm going to ask both sides to please try and resolve their conflicts and try to get better communication so that this situation does not continue.

Chair Kennedy: Commissioner Carey?

Commissioner Carey: I've been on this job now for nearly a year and I, and my fellow Commissioners, day after day, almost hour after hour, make decisions that we hope and think are in the best interest of the people of this County. That's what we did when we made the original decision to consolidate the offices, we thought at the time that it was in the best interest of this County. It turns out that it doesn't appear to be so. But I must say that there's no effort to deceive anyone here, anyone in Missoula County. We are acting, we have acted, in what we believe are the best interests of the County. We make mistakes sometimes. I happen to think that this particular decision was a mistake and therefore I'll second Commissioner Evans motion.

Chair Kennedy: Thank you, Commissioner Carey. Initially when the proposal was made to consolidate the offices, it came on the heels of a difficult and time consuming budgetary process where the Board of County Commissioners considered the organizational structure of the County administrative offices and elected offices. And, in accordance with the Montana Constitution, we acted to address what we thought was an important issue on delivery of the services to the public. And the issues for us at that time were accountability, efficiency and communications. And we articulated that in written form in August and also in October, during that hearing process. And since then, obviously, there's been a change of heart on the part of two members of the Board of County Commissioners as to that process. I want to make an observation, however, about the legitimacy of the process that we were in. From Mr. Erickson's comment, it's clear that the legislature is concerned about the operations of the District Court and at least the District Court fund throughout the State. So, clearly the operations of the District Court are of concern, not just in Missoula County, but statewide. I'd also reference legislation that was offered in 1973 and also in 1975 on the heels of the new constitution, that considered substantial changes in how the District Court operates in the State of Montana, and how it's funded. Even though those pieces of legislation were defeated in those particular legislatures, those problems or those issues persist throughout the state. And again, there are issues that are not exclusive to Missoula County, they are issues in the State of Montana. Somehow, somewhere, that is going to get resolved. I don't know when or how. Our attempt to resolve at least part of that clearly was in our effort to consolidate that office. Consolidation, of course, creates other issues. The constitution allows us, and the State law allows us to consolidate those offices within other elected offices. And hence, what are the choices? Do we consolidate in the Commissioners? Well, I think not. Do we consolidate in the Surveyors? Well, we're looking at consolidating that office as well, so I think not. And so the choices are really limited and that's how the choice for the Treasurer's office came about. It wasn't that we didn't see conflict between the Treasurer's office and the Clerk of Court. It seemed to be the only fall back position, really, that we had. So looking at what we wanted to accomplish, again, addressing the issues of accountability, efficiency and communications, we felt at the time that under those circumstances that we were on the right course in making that move. It now appears, based on the testimony given and reassessing all of that, that there has been a change of heart. I regret the change, I believe that we can deal with whatever would come out of the consolidation. At the same time, I understand the reason for the change and I probably will support it. My hope is, is that the message that goes back from this meeting to the legislature is one that something needs to be done and we can't defer solving that problem as we did in 1973 and as we also did in 1975. So I would urge a very strong message that Representative Erickson take back to the committee about that. With that, if there's any further comment, I'd ask it now. And if not, then I'll call for the question. All those in favor signify by saying "Aye."

Commissioner Evans: Aye.

Commissioner Carey: Aye.

Chair Kennedy: Aye. Those opposed? Thank you very much.

Commissioner Evans: I'd like to thank all of you for taking the time and the interest to come here. This is your government in action. Maybe sometimes you like it, maybe sometimes you don't like it. Sometimes we make a mistake and sometimes we're smart enough to admit it. And Happy Holidays to all of you.

There being no further business to come before the Board, the Commissioners were in recess at 2:05 p.m.

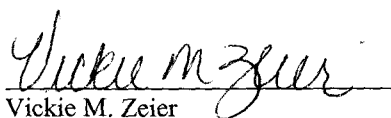
THURSDAY, DECEMBER 30, 1999

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

Claims List -- Commissioners Evans and Kennedy signed the Claims List, dated December 30, 1999, batch numbers 403, 405 and 409, with a grand total of \$248,412.87. The Claims List was returned to the Accounting Department.

FRIDAY, DECEMBER 31, 1999

The Courthouse was closed for the New Year's Day holiday.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, JANUARY 3, 2000

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

Corporate Warranty Deed – The Commissioners signed a Corporate Warranty Deed for the sale of Lots 1, 2, 3, 4, 9 and 10 of Block 13 of the Missoula Development Park (Phase 8) from the Missoula County Airport Industrial District to the Montana 1031 Exchange Corp., Inc., as Intermediary and Agent for Michael J. Marbut of Missoula, Montana. The total sale amount was \$924,649.43. The document was returned to Western Title and Escrow for further handling.

TUESDAY, JANUARY 4, 2000

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

Monthly Report – Chairman Carey examined, approved and ordered filed the Monthly Report for Justice Court 2, Karen Orzech, and for the Clerk of the District Court, Kathleen Breuer, for the month ending December 31, 1999.

Payroll Transmittal – The Commissioners signed a Payroll Transmittal for Pay Period 25, Pay Date December 17, 1999 in the amount of \$727,304.33. The document was returned to the Auditor's Office.

ADMINISTRATIVE MEETING

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

Agreement – The Commissioners signed an Agreement with the Montana Power Company for the installation of an electric pole to plug in the County loader at the Lolo gravel pit. The monthly electric fee of \$10.86 will come out of the Road Department maintenance budget. The document was returned to Horace Brown in the County Surveyor's Office for further handling.

Agreement – The Commissioners signed an Agreement with the Montana Power Company for the installation of an electric pole to plug in the County loader at the Miller Creek gravel pit. The monthly electric fee of \$10.86 will come out of the Road Department maintenance budget. The document was returned to Horace Brown in the County Surveyor's Office for further handling.

Lease Agreement – The Commissioners signed a Lease Agreement with Montana Rail Link for 2.18 acres square feet of railroad right of way for the purpose of maintaining an EDM Survey Calibration Line, which would replace line monuments destroyed in the Airport Exchange and West Broadway Project. The total cost will be a one-time fee of \$100.00. The document was returned to Horace Brown in the County Surveyor's Office for further handling.

Agreement – Chairman Carey signed an Agreement with the Montana Department of Transportation to fund the Missoula Integrated Traffic Safety Program, with the mission of preventing the human and economic loss resulting from traffic crashes. The term will be October 1, 1999 through September 30, 2000. The amount shall not exceed \$58,000.00. The document was returned to the Health Department for further handling.

Resolution – The Commissioners signed Resolution No. 2000-001, rescinding Resolution No. 95-107 which established the County Management Team.

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

WEDNESDAY, JANUARY 5, 2000

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

Claims List -- Commissioners Carey and Evans signed the Claims List, dated January 5, 2000, batch numbers 410, 411 and 413, with a grand total of \$169,260.71. The Claims List was returned to the Accounting Department.

Agreements – Chairman Carey signed two Agreements with Dave C. Holley and Christopher C. Ballentine of Missoula, for the property located at 1312 Phillips Street in Missoula; Lot 17 and the west 5' of Lot 18 in Block 60 of School Addition, a platted subdivision in Missoula:

1. A Deed Restriction Agreement to fund the aforementioned Property Owner's through the HOME Investment in Affordable Housing Program. The purpose of the Agreement is to provide assistance for downpayment, closing costs and mortgage reduction assistance
2. A Subordinate Deed of Trust, a Security Instrument securing the repayment of debt, payment of all other sums and the performance of Borrower's covenants and agreements.

The total loan amount will be \$3,700.00. The document was returned to the Clerk and Recorder's Office.

Interlocal Agreement – Chairman Carey signed an Interlocal Agreement between the Department of Justice and the Department of Corrections to set forth the basis on which the State Agencies agree to pay costs of inmate confinement in a detention center following an arrest including medication, medical services or hospitalization, but excluding capital construction costs. The term shall be October 1, 1999 through September 30, 2000. The total amount will be \$47.00 a day per inmate confined at the County Detention Center. The document was returned to the Sheriff for further handling.

PUBLIC MEETING – January 5, 2000

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

Public Comment

None

Routine Administrative Actions

Commissioner Kennedy moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$169,260.71. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Hearing: Annexation to Missoula Rural Fire District – Upper O'Brien Creek

A petition has been received by the Clerk & Recorder's Office to annex a parcel of land, located in Missoula County, into the Missoula Rural Fire District.

The petition has been checked and verified. It contains signatures of more than 50% of owners of the privately owned land in the area to be annexed and a majority of taxpaying freeholders within the area described, thereby meeting the requirements of 7-33-2125 M.C.A. for annexation of adjacent territory.

The area to be annexed is described as follows:

"A tract of land located in the SW 1/4 of Section 30, Township 13 North, Range 20 West, Principal Meridian, Montana, being more particularly described as follows: The E 1/2 of the SW 1/4 and Government Lot 3 and Lot 4 of Section 30, Township 13 North, Range 20 West, Principal Meridian, Montana. (Upper O'Brien Creek Area)."

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

Michael Sehestedt stated this action was a matter of hearing any protests and none were received.

Commissioner Evans stated there was a letter from the Missoula Rural Fire District to approve this annexation.

Horace Brown stated for the record that the Road Department does not maintain the half-mile of road from where the gate used to be to the Pickering property. It may be difficult at times for a fire truck to respond.

Chairman Carey stated there have been some problems with this road and he asked Michael Sehestedt to respond in writing to the Pickerings. They have asked for a written statement as to why the County does not maintain this road.

Commissioner Evans moved that the Board of County Commissioners approve the annexation of (the Pickering parcel) "a tract of land located in the SW 1/4 of Section 30, Township 13 North, Range 20 West, Principal Meridian, Montana, being more particularly described as follows: The E 1/2 of the SW 1/4 and Government Lot 3 and Lot 4 of Section 30, Township 13 North, Range 20 West, Principal Meridian, Montana. (Upper O'Brien Creek Area)," based on the approval from the Fire District.

Commissioner Kennedy declined to second the motion. This request is for a non-contiguous annexation to the Fire District. There are two examples of non-contiguous annexation in Missoula County that have created problems. The first example is in Rock Creek. The people who live in-between the non-annexed area believe they have fire service when they, in fact, do not. It has also been the policy of Rural Fire to respond even in areas that are not within the district. That creates a burden on the taxpayers of a particular district. The second example is in the Frenchtown Fire District. The Fire Chief has repeatedly mentioned problems associated with non-contiguous annexations in this area. It creates a burden for the Fire District as they do receive emergency and fire requests in areas that are not within their district. Today's action compounds the problem. Additionally, there is not an adequate road to this property that can accommodate fire or emergency vehicles. By passing this annexation, a false message is sent to the Pickerings that they will have protection that they can't gain by this action. He is not in favor of the annexation and could not second the motion.

Commissioner Evans stated that the message being sent to the Pickerings by not approving this annexation was that they do not have and cannot have fire protection. By approving this action, they have some agreement of protection with the fire district. She was not willing to not grant this annexation.

Michael Sehestedt stated the Pickerings are probably not the problem, but subsequent purchasers might not understand the extent of protection. He asked what the ownership of land in-between this tract of land was?

Commissioner Kennedy stated it was surrounded by U.S. Forest Service land.

Michael Sehestedt stated that was one of the reasons for the non-contiguous annexation. The Forest Service was unlikely to ever annex into the fire district.

Chairman Carey stated Commissioner Kennedy brought up a good point and was concerned about the ability of actually delivering fire service. Was this giving false hope to the Pickerings and opening the County to some kind of liability?

Michael Sehestedt stated it did not open the County to liability. He asked if this issue could be tabled for a few moments while he did some research into the statutes.

Chairman Carey stated this action would be temporarily tabled.

Hearing: Annexation to Missoula Rural Fire District – Portion of Hanson Ranch – Butler Creek Area

A petition has been received by the Clerk & Recorder's Office to annex a parcel of land, located in Missoula County, into the Missoula Rural Fire District.

The petition has been checked and verified. It contains signatures of more than 50% of owners of the privately owned land in the area to be annexed and a majority of taxpaying freeholders within the area described, thereby meeting the requirements of 7-33-2125 M.C.A. for annexation of adjacent territory.

The area to be annexed is described as follows:

"A tract of land located in SW 1/4 of Section 23, Township 14 North, Range 20 West, Principal Meridian, Montana and a portion of the W 1/2 of Section 26, Township 14 North, Range 20 West, Principal Meridian, Montana lying north of Interstate 90 and west of the east right-of-way of Butler Creek Road, being more particularly described as follows: Commencing at the Section corner common to Sections 26, 27, 34 & 35, T14N, R20W; thence north 1,000 feet, more or less, along the section line common to Sections 26 & 27 to the north right-of-way of Interstate 90 and being the **TRUE POINT OF BEGINNING**; thence the following 5 courses along the Missoula Rural Fire District Boundary annexed by Missoula County Commissioners Resolution No. 81-55; 1) Southeasterly 2,400 feet, more or less, along said north right-of-way line of Interstate 90 to the east right-of-way of Butler Creek Road; 2) Northerly 1,500 feet, more or less, along said easterly right-of-way to the north-south midsection line of said Section 26; 3) North along said north-south midsection line 4,000 feet, more or less, to the 1/4 corner common to Sections 23 & 26, T14N, R20W; 4) continuing north 1/2 mile, more or less, along the north-south midsection line of said Section 23 to the center 1/4 corner of said Section 23; 5) West 1/2 mile, more or less, along the east-west midsection line of said Section 23 to the 1/4 corner common to Sections 22 & 23, T14N, R20W; thence along the Frenchtown Rural Fire District boundary annexed by Missoula County Commissioners Resolution No. 90-45, south along the Section line common to Sections 22 and 23, 26 and 27, T14N, R20W to the north right-of-way of Interstate 90 and the **TRUE POINT OF BEGINNING**. (A portion of Hanson Ranch)."

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

Horace Brown stated most of this area appears to be open land. The Hanson Ranch would encompass part of the land and possibly a nursery in the future.

Commissioner Evans stated she wondered if one of the reasons for this request was the offer from the Ibeys for their nursery business, which might be withdrawn. If that happened, would this petition still be wanted. The commercial portion of the Ibey Nursery is not allowed under the Comprehensive Plan and the sale from the Hanson Ranch may not happen. However, the petition has been presented.

Commissioner Kennedy stated the effectiveness was in question, there were no common roads that cross the property, although there is a County road that abuts the property. The property would be taxed for fire protection which, in his estimation, was absent and he did not see the justification for annexation. He wondered if the Hansons understood they would receive a tax bill because of this action, but would likely receive no service for it.

Chairman Carey stated he surmised, as did Commissioner Evans, that this action was tied somehow to the Ibey Nursery proposal.

Commissioner Evans guessed that somewhere on the ranch was the Hanson house which would have to have an access road. Maybe the Hanson's want Rural Fire to protect their house. It was not up to the Commissioners to second-guess these petitions.

Michael Sehestedt stated this petition has met all the requirements in the statute regarding a petition in writing with 50% or more of the owners and a public hearing date set and published. The statute goes on to state that the Board of County Commissioners shall consider the petition and any objections to the annexation. The Board shall approve the annexation unless a protest petition, signed by a majority of the landowners in the area proposed for annexation, is presented at the hearing, in which case the annexation shall be disapproved. Statutorily, if there are no protests, the Board must approve the petition.

Commissioner Evans stated an address on Butler Creek Road has been listed for the Hansons, so there has to be some way to reach their house.

Michael Sehestedt stated this particular petition was probably driven by the proposed development and had little to do with providing fire service to the home. The ranch extends and includes property adjacent to the road for some distance.

Horace Brown stated the ranch appears to already be covered by the Missoula RFD. There is a private road that parallels the Interstate that goes to a gravel pit, near the Ibey proposal.

Michael Sehestedt stated that these long, narrow annexations are typically ranch land that had been excluded from a fire district, though the actual homesite was included. He suspected this petition had to do with the development proposal as well.

Commissioner Evans stated the Board has no option but to approve the request as no protest had been received.

Michael Sehestedt stated, however, the action could be continued.

Commissioner Evans moved that the Board of County Commissioners approve the petition for annexation for "a tract of land located in SW 1/4 of Section 23, Township 14 North, Range 20 West, Principal Meridian, Montana and a portion of the W 1/2 of Section 26, Township 14 North, Range 20 West, Principal Meridian, Montana lying north of Interstate 90 and west of the east right-of-way of Butler Creek Road, being more particularly described as follows:

Commencing at the Section corner common to Sections 26, 27, 34 & 35, T14N, R20W; thence north 1,000 feet, more or less, along the section line common to Sections 26 & 27 to the north right-of-way of Interstate 90 and being the **TRUE POINT OF BEGINNING**; thence the following 5 courses along the Missoula Rural Fire District Boundary annexed by Missoula County Commissioners Resolution No. 81-55: 1) Southeasterly 2,400 feet, more or less, along said north right-of-way line of Interstate 90 to the east right-of-way of Butler Creek Road; 2) Northerly 1,500 feet, more or less, along said easterly right-of-way to the north-south midsection line of said Section 26; 3) North along said north-south midsection line 4,000 feet, more or less, to the 1/4 corner common to Sections 23 & 26, T14N, R20W; 4) continuing north 1/2 mile, more or less, along the north-south midsection line of said Section 23 to the center 1/4 corner of said Section 23; 5) West 1/2 mile, more or less, along the east-west midsection line of said Section 23 to the 1/4 corner common to Sections 22 & 23, T14N, R20W; thence along the Frenchtown Rural Fire District boundary annexed by Missoula County Commissioners Resolution No. 90-45, south along the Section line common to Sections 22 and 23, 26 and 27, T14N, R20W to the north right-of-way of Interstate 90 and the **TRUE POINT OF BEGINNING**. (A portion of Hanson Ranch)," based on their petition and acceptance by the fire district. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Hearing: Annexation to Missoula Rural Fire District – Upper O'Brien Creek

Chairman Carey returned to the annexation petition for the Pickering property.

Commissioner Kennedy asked if there was anything in the law about the shape or contiguous nature of the property to be annexed?

Michael Sehestedt stated he had looked at this question many years ago and his interpretation was the fire district was suggesting a contiguous area. However, there is an old Attorney General's opinion, not overruled and the law hasn't changed, that says a fire district may do non-contiguous annexations.

Commissioner Evans suggested there may be a compromise or some additional information that could be conveyed to the property owner. She asked if there is no fire district in an area, who would be responsible, the Forest Service or the County?

Michael Sehestedt stated it varies depending on the nature of the fire. If it is a wildland fire, non-structural, it would be state lands or forest service. If a structure was involved it would be the County Sheriff's responsibility.

Commissioner Kennedy stated there was an agreement between Missoula County, the Forest Service and state lands that state lands does all non-structural fires that are outside a fire district. Structural fires are still the Sheriff's responsibility.

Commissioner Evans stated some of Commissioner Kennedy's concerns could be eased by sending a clarification to the property owner that says the request for annexation has been approved but due to location, road conditions, etc., there were no guarantees of protections. She did not want to second-guess the fire district or the petitioners.

Michael Sehestedt stated action could be continued for one week. The Pickerings and the Fire District could be contacted and told that there were questions that could not be answered because they were not present.

Commissioner Kennedy stated he would prefer to do that and have a representative present.

Michael Sehestedt stated it needed to be clear that the fire district could only put out a fire if access to the property allowed for emergency equipment. He wanted the Pickerings to understand the petition would be granted if they did not protest and they would be taxed accordingly for the fire district although emergency equipment might not be able to reach the property due to poor access. He would send a note to the Fire District that this action was postponed for one week and the Fire District should contact the Pickerings. Additionally, before next Wednesday, he would contact the Pickerings regarding why their road would not be maintained. It has not been maintained since 1974 and is not up to County standards.

Chairman Carey stated this action would be postponed for one week, to January 12, 2000.

There being no further business to come before the Board, the Commissioners were in recess at 1:47 p.m.

THURSDAY, JANUARY 6, 2000

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

Claims List -- Commissioners Kennedy and Carey signed the Claims List, dated January 6, 2000, batch numbers 416 and 421, with a grand total of \$396,684.72. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with Minnesota Program Development, Inc. for domestic violence training (funded by the Rural Domestic Violence Grant) for criminal justice, law enforcement, advocates and other professionals. The term will be January 3, 2000 to January 9, 2000. The amount shall not exceed \$7,100.00.

Resolution – The Commissioners signed Resolution No. 2000-002, a Budget Amendment for the Health Department's Junk Vehicle Fund. The total amount will be \$18,000.00.

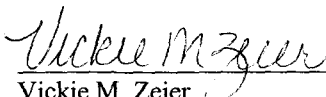
Resolution – The Commissioners signed Resolution No. 2000-003, an annexation to the Missoula County Rural Fire District for a tract of land located in the SW ¼ of Section 23, T 14 N, R 20 W, PMM, Missoula, Montana lying North of Interstate 90 and West of the East right-of-way of Butler Creek Road.

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

FRIDAY, JANUARY 7, 2000

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

Monthly Report – Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John Odlin, for the month ending December 31, 1999.


Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chairman
Board of County Commissioners

MONDAY, JANUARY 10, 2000

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Kennedy was out of the office from January 10 through January 12.

Indemnity Bond – Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Doug Dunston as principal for Warrant #35573 issued November 9, 1999 on the Missoula County 1000-300-Sheriff Fund in the amount of \$77.00 now unable to be found.

Monthly Report -- Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Douglas Chase, for the month ending December 31, 1999.

Payroll Transmittal – The Commissioners signed a Payroll Transmittal for Pay Period 26, Pay Date December 31, 1999 in the amount of \$715,204.71. The document was returned to the Auditor's Office.

TUESDAY, JANUARY 11, 2000

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

Claims List -- Commissioners Carey and Evans signed two Claims Lists, both dated January 11, 2000, batch numbers 418, 422, 424, 425 and 427, with a grand total of \$203,854.66 and batch number 426, with a grand total of \$18,741.04. The Claims Lists were returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Contracts – The Commissioners signed two contracts for improvements to walkways for the Missoula County Road Department with Jenson Paving Company:

1. To widen the south shoulder of 7th Street from Clements to Hiberta, and including the removal of existing culverts, a portion of a Portland Cement driveway and trees and vegetation; the installation of new culverts, the relocation of an irrigation ditch, excavating of roadway shoulders and the placing of aggregate and asphalt concrete. The term will be 90 days after the date when the Contract Time commences to run as provided in paragraph 2.3 of the General Conditions. The total cost will be \$216,363.97.
2. To create a walkway on South Avenue; and widen the shoulder on both sides of South Avenue from Reserve to 27th Street, and separated on the south side of South Avenue from Fort Road to 38th Street. The term will be 90 days after the date when the Contract Time commences to run as provided in paragraph 2.3 of the General Conditions. The total cost will be \$154,272.60.

The documents were returned to Doreen Culver, Bidding Officer, for further handling.

Release of Easement – The Commissioners signed a Release of Easement with the Missoula County Airport Industrial District for the following:

1. From Sunlight Development Company dated December 20, 1990, and recorded in Book 323 at Page 129, in the Office of the Clerk and Recorder of Missoula County.
2. From Sunlight Development Company dated December 19, 1991, modifying the easement in gross recorded in Book 323 at Page 129, and recorded in Book 342 at Page 2376.

The document was returned to Mike Sehestedt, Chief Civil Attorney, for further handling.

Maintenance Agreement – Chairman Carey signed a Maintenance Agreement with the Montana Department of Transportation for the State Project STPP-F-83-1(9)0 Clearwater Junction North to construct an eight-foot wide walkway/bikeway from Project Station 205+65 to 212+49.13 as shown in the State construction plans. The total amount of \$14,500.00 was allocated from the County's CEPT funds for this project. The document was returned to Horace Brown, County Surveyor, for further handling.

Resolution – The Commissioners signed Resolution No. 2000-004, a Resolution relating to Rural Special Improvement District No. 8467, creating the District for the purpose of undertaking certain local improvements and financing the costs thereof through the issuance of Rural Special Improvement District Bonds, secured by the

County's Rural Special Improvement District Revolving Fund and establishing compliance with reimbursement bond regulations under the Internal Revenue Code.

Other items included:

- 1) The Commissioners approved a Summary Quotation from Sterling Trucks for the probable purchase of an LT9500 Chassis for the Road Dept. Four trucks will be purchased through an InterCap Loan if available. The total value was \$71,359.00.

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

WEDNESDAY, JANUARY 12, 2000

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

Budget Transfers – The Commissioners signed two Budget Transfers for the Health Department (Traffic Safety) in the amount of \$34,232.00 for FY00 and for the Health Department (CDC Refugee) in the amount of \$2,000.00 for FY00.

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with Montanans for Quality Television (MQTV) agreeing to serve as a sponsor for Cultural and Aesthetic Projects that are funded by the Montana Arts Council, this project being sponsorship of four film festivals at the Crystal Theatre in Missoula. The term will be July 1, 1999 through June 30, 2001. The total amount shall not exceed \$3,000.00.

Professional Service Contract – The Commissioners signed two Professional Service Contracts, with Scott Belknap and with John Kovalicky, to perform temperature soundings on a daily basis for the Air Quality Program through the winter months as required by the regulations. Both terms will be December 15, 1999 through March 15, 2000. The total amount for both shall be \$26.40 for each sounding performed. The document was returned to the Health Department for further handling.

PUBLIC MEETING – January 12, 2000

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

Patty Rector, Recording Secretary, stated that because the Commissioners were not meeting in their normal location, Room 201 of the Courthouse Annex, they were using a portable recording device. She asked everyone to please speak up so their comments would be recorded.

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$619,280.42. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Hearing: Annexation to Missoula Rural Fire District – Upper O'Brien Creek (Continued from January 5, 2000)

Chairman Carey reopened the public hearing on the Missoula Rural Fire District Annexation in Upper O'Brien Creek.

A petition has been received by the Clerk & Recorder's Office to annex a parcel of land, located in Missoula County, into the Missoula Rural Fire District.

The petition has been checked and verified. It contains signatures of more than 50% of owners of the privately owned land in the area to be annexed and a majority of taxpaying freeholders within the area described, thereby meeting the requirements of 7-33-2125 M.C.A. for annexation of adjacent territory.

The area to be annexed is described as follows:

"A tract of land located in the SW 1/4 of Section 30, Township 13 North, Range 20 West, Principal Meridian, Montana, being more particularly described as follows: The E 1/2 of the SW 1/4 and Government Lot 3 and Lot 4 of Section 30, Township 13 North, Range 20 West, Principal Meridian, Montana. (Upper O'Brien Creek Area)."

Commissioner Evans stated she had a conversation with Bill Lindstrom of Missoula Rural Fire District regarding this issue. The fire district has a letter of understanding with the Pickerings that they will be responsible for road maintenance from where County maintenance ends to their house. Rural Fire has stated they can provide service to this property.

Scott Waldron, Frenchtown Rural Fire, and Missoula County Fire Protection in regard to this annexation, stated that if property is not inside an established fire district, the County is responsible for fire protection.

Paul Laisy, Assistant Chief, Missoula Rural Fire, stated representatives of the fire district visited the Pickering property. There is no problem with access to the property, there is very little grade and the road has been improved quite a bit. They can get fire apparatus to the residence without any problems. Both parties understand that if Mr. Pickering does not maintain the road, that could delay access from the fire district.

Commissioner Evans moved that the Board of County Commissioners approve the annexation petition for "a tract of land located in the SW 1/4 of Section 30, Township 13 North, Range 20 West, Principal Meridian, Montana, being more particularly described as follows: The E 1/2 of the SW 1/4 and Government Lot 3 and Lot 4 of Section 30, Township 13 North, Range 20 West, Principal Meridian, Montana. (Upper O'Brien Creek Area)." Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

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

Hearing: Fairfax Estates Lot 2 (4 lot Subdivision) – Northwest of Huson on Bagnell Lane

Chairman Carey opened the public hearing.

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

Both subdivisions that will be heard today are in close proximity to each other, both are part of the Fairfax Estates Subdivision approved by the Board of County Commissioners in 1995. That subdivision created 5 lots. The first proposal today is to further divide Lot 2 of Fairfax Estates and the second application that will be heard is to redivide Lots 4 and 5.

The property is located on the I-90 Frontage Road and Bagnell Lane about 3/4 of a mile west of the Huson Interchange. The applicants, Ken and Lee Jackshaw, are proposing to split Fairfax Estates Lot 2 into 4 four lots, each about 1 acre in size. The property is unzoned and the Comprehensive Plan recommends open and resource land use with a density of one dwelling unit per 40 acres. The property is within the Huson Activity Circle which is designed as the location where any new development should occur. Lot 2 is currently vacant.

Access is proposed via the I-90 Frontage Road to Bagnell Lane to private driveways. There is a one-foot no access strip on the Frontage Road and the proposed plat includes the waiver of the right to protest an RSID for further improvements to the Frontage Road. Bagnell Lane has been improved to a gravel width of 20-22 feet and there is a hammerhead turnaround located at the end of the road easement. The first subdivision was approved with a variance for roadway standards allowing Bagnell Lane to be gravel and 20 feet wide and the applicants had not proposed further improvements to Bagnell Lane and had requested variances for surface width and paving. Frenchtown Rural Fire recommended that due to the additional homes that would be using the road that Bagnell Lane be improved to subdivision standards to ensure adequate access for emergency vehicles. Both staff and Planning Board recommended denial of the portion of the variance request related to width and approval of the portion of the variance request related to paving. Condition 2 specifies improvements to Bagnell Lane. There is a road maintenance agreement included for Bagnell Lane and Condition 6 requires Attorney's Office approval of that agreement.

Lots 2A and 2C would be accessed from driveways from Bagnell Lane. Lots 2B and 2D would share a driveway located within a 30-foot easement. The applicant has requested a variance from the requirement for a 54-foot driveway easement. Both staff and Planning Board recommended approval of that variance request.

There is a general drainage plan included in the application. There is a swale in the southwest part of Lot 2C that is shown as a no build zone. There are no walkways along the Frontage Road or Bagnell Lane. There is a walkway easement between Lot 1 and Lots 4 and 5 that was granted with the underlying subdivision, that connects Bagnell Lane to View Crest Drive. The applicant has requested a variance for further walkways. Staff and Planning Board recommend approval of that variance request.

The applicants propose that Lots 2A and 2B share a well and that Lots 2C and 2D share a well. There are individual septic systems proposed for each lot. Cash in lieu of parkland was provided at the time of Fairfax Estates original plat filing. The subdivision is served by Frenchtown Rural Fire. There are 2 conditions of approval recommended related to fire services, one for the \$100 per new lot to provide water and also an RSID waiver for water systems in the future. The proposed covenants include measures to minimize human/wildlife impacts and there are other covenants for the property that address land use, building setbacks, landscaping, driveway maintenance, weed control and fire protection standards.

The Office of Planning and Grants received one letter from a neighboring resident commenting on the proposal with an issue of concern related to high ground water and the no build area of Lot 2C and possible impacts from septic systems on Lots 2C and 2D. Staff and Planning Board's recommended motions are included in the subdivision packet: the first related to Bagnell Lane, the second related to walkways, the third related to shared driveway easement width. The fourth motion, recommended by staff and Planning Board, is for approval of the subdivision subject to 6 conditions. Planning Board did not recommend any changes to the conditions that staff presented.

Ron Ewart, Eli & Associates, developer's representative, was present, as were the applicants, Ken and Lee Jackshaw, and George Sherwood who is working with the Jackshaw's on this property. There is agreement with the recommended conditions of approval as they stand. The property is located in the Huson area about 1/4 mile from the Huson exit. Directly across the Interstate to the south there is a good-sized zoning district that allows one home per acre, so this would be somewhat consistent with that. The property is fairly level. There is a low spot in the southwest corner of Lot 2C which is shown as a no build zone. Ken and Lee Jackshaw are in the process of building a home on this property. They are proposing the subdivision to set a good example for single family residential development in this area. They are proposing covenants that address a wide range of issues to include landscaping requirements. The homes will be single family residential, likely stick-built homes or potentially new modulars on permanent foundations with pitched roofs. There are landscaping requirements with several trees to be plants. This will be a good-looking subdivision.

Scott Waldron, Frenchtown Fire, stated this subdivision was originally for five lots. Fire agencies have tried to put in fire systems that will meet the needs of subdivisions as they grow, and not impact fire agencies by having to purchase new fire trucks and such. When a subdivision like this occurs, where the original subdivision can be divided again, they would like to be put on notice of that fact. If they had known this subdivision would be divided further, they would have required some additional water supply facilities during the original planning stage. By these additional subdivisions, it changes the nature from a rural subdivision to a more urban subdivision with a higher concentration of

homes. Frenchtown Fire has requested that OPG notify them about subdivision that can be divided multiple times as it will have an impact on how fire suppression capabilities are included. There should be no problem with this particular subdivision, but in some cases, where subdivisions can be further divided, it may circumvent installing proper water supply systems for fire suppression. The responding fire agencies should be aware of subdivisions allowing further splits in the future at the time of initial approval.

Commissioner Evans stated the Jackshaws would want adequate fire protection and should work with the rural fire department to make sure the protection is provided.

Scott Waldron stated that fire districts County wide have requested that when a subdivision has more than 10 homes, they would like some kind of fixed water system installed. In this particular case, it was not known that the nature of the subdivision would change. The original proposal was for a 5 lot rural subdivision. This further division will still be acceptable. However, the fire district needs to be aware if there will be future multiple splits of approved subdivisions.

Commissioner Evans stated that the potential for future lot splits is always a reality. The only way to provide protection in the future is to require the waiver of the right to protest inclusion in a water district.

Scott Waldron stated that condition is included with this subdivision.

Nancy Heil stated that was included in Condition 4 of this subdivision.

Scott Waldron stated that should be a standard for all future subdivision County wide to provide for fire protection, as is already currently done with sidewalks and road improvements.

Ken Jackshaw stated their intent with this subdivision was to protect the interest in their home to make sure something would not be built in front of them that would devalue their house. He suggested the Commissioners, on future subdivisions, require something in the covenants that would prevent future splits of land.

Colleen Dowdall stated that would not be a covenant the County would be in a position to require. It would be, in essence, zoning. The County does not enforce covenants. There are certain things in covenants that the County has decided they need to enforce, but this is not one of those items and she did not recommend the County get into it at this point.

Ken Jackshaw stated then zoning and building permits should be considered County wide in the future to address those issues.

Commissioner Evans stated she would not be in favor of telling anyone they could not split their land.

Chairman Carey stated for him it was more an issue of how the land was split and what was built on it. He was recently in Southern California and there were requirements there that if someone had a home with an ocean view and they wanted to enlarge that home, sticks and ribbons were required before construction so neighbors' view of the ocean was not impaired. Removing of visual resources was strictly controlled.

Ken Jackshaw stated that was the same situation in the Flathead Lake area.

Robert Bean stated he understood Mr. Jackshaw's concerns but felt it should be more a responsibility of the realtor who sold the land to explain the consequences of no zoning.

Commissioner Evans stated the responsibility really lay with the person who buys the land, hence the term "Buyer Beware." She asked Ron Ewart about paving versus not paving Bagnell Lane?

Ron Ewart stated the property is located outside the air stagnation zone. Also, the road is short and the speed of travel will be slow which will not create that much dust, as well as from an economic standpoint. They will widen the road to meet Scott Waldron's concerns.

Scott Waldron stated Houle Creek in this area is the worst dust storm in this part of the County, and all these other unpaved roads add to the problem. If paving is not being considered, then some type of dust abatement should be done on an annual basis. His fire apparatus can access any all weather surface as required by subdivision regulations. However, it is extremely dusty in that area.

Commissioner Evans stated she was inclined to require paving. She did not like to increase the cost, but Houle Creek and other roads in this area do create a bad dust problem. As this area grows, the problem will compound and the roads will need fixing. She felt the road should be paved and there needs to be some cooperation between this subdivision and the Bean Addition subdivision, so there is a proportional cost borne by each party.

Chairman Carey asked Nancy Heil to report on her research on other subdivisions requiring paving in the area.

Nancy Heil stated there were some subdivisions in the Huson area that had been reviewed recently. Huson Heights Subdivision was approved in 1996 right across from this subdivision and Stenerson Road was required to be paved. Another subdivision, Homestead Acres, accessed off of an unpaved portion of Mullan Road and a paving variance was approved for that access from an unpaved surface with the requirement that when Mullan Road was paved, that road would be paved at that time as well. The River Ranch Subdivision required Lefler Lane off of Mullan Road to be paved. The Boyer Subdivision had a denial of a paving variance for the access road that came off the paved part of Mullan Road. So, there has been paving required on other recently approved subdivisions when access was from a paved road.

Ken Jackshaw stated they would do their share but asked how long it would be before the County got some of the other roads paved. He felt it did not do any good for his small road to be paved if the other roads in the area were not paved. He wanted to see a plan for paving in the area.

Horace Brown stated the only way those roads would get paved would be through an RSID. The County does not have the money to pave roads. The State gave the millings that would have gone to this area to the contractor, otherwise some of these roads would have been paved.

Commissioner Evans asked how many homes were on View Crest Drive?

Scott Waldron stated there were about a half dozen homes, plus the Bean Subdivision, if approved, will add another 5 homes.

Commissioner Evans was trying to determine how long the road was, how many homes were on it and what the cost might be for an RSID.

Chairman Carey asked how fast this area was being developed.

Ken Jackshaw stated the Johnson Brothers had some lots up the hill but he did not know if they had any immediate plans.

Nancy Heil stated that View Crest Drive was a County maintained road.

Michael Sehestedt stated the subdivision off Houle Creek Road was tracts larger than 20 acres and not subject to review. The road dust is only one of several problems in the area. A plan for the area needs to be put in place. The County has started collecting waivers recently for any development that impacts Houle Creek Road. It will get paved eventually.

Nancy Heil stated that one of the underlying conditions of approval for the original Fairfax Estates was an RSID waiver for improvements including participation in a dust abatement district to View Crest Drive. The underlying 5 lots in Fairfax Estates are already subject to an RSID waiver for View Crest Drive.

Colleen Dowdall stated View Crest Drive was not ignored when this subdivision was reviewed. The distinction is that View Crest Drive is an off site access road that doesn't come under paving requirements. That is why there is no RSID waiver or variance request for View Crest Drive. The road looked at for the Bean Subdivision was Calamity Lane and a paving variance has been requested and recommended for approval because it would be a short stretch of paving met on either side by gravel road, and part of that gravel road is steep, so the paving would not last long under those circumstances. If the Commissioners are inclined to require paving for Fairfax Estates Lot 2 on Bagnell Lane, the condition for paving could state that the applicant pays their proportionate share of the cost of paving Bagnell Lane. If the Commissioners are inclined to require that Bean participate in that, then they could make a similar motion for that subdivision.

Commissioner Evans would like to get the road paved with each paying a portion.

Horace Brown stated Bagnell Lane is a private road so before an RSID could be initiated, it would have to be dedicated to the County.

Colleen Dowdall stated that in the Subdivision Regulations, the County has the jurisdiction to require that Bagnell Lane be paved. The issue is who should pay for the paving. She was not convinced there was jurisdiction to require that View Crest Drive be paved, because it is an off site access road.

Ken Jackshaw asked if the Commissioners wanted all of Bagnell Lane paved, or just to the entrance between Lots 2A and 2C?

Nancy Heil stated the way standard reads is that on site roads that are less than 500 feet, when attributable to the subdivision, be paved. She was not clear if that meant only that portion that was used by the subdivision.

Colleen Dowdall stated it would typically be required only to the entrance of the subdivision. In this case, however, the other subdivision has a lot also accessed by Bagnell Lane.

Robert Bean stated he is not changing his access from Bagnell Lane.

Commissioner Evans stated if paving was required it would benefit him as well and he should have some proportion of responsibility. She would also want the Bean Addition to have a waiver of the right to protest an RSID for View Crest Drive since the other lots will access from there.

Ken Jackshaw stated his understanding was that he would have to pave Bagnell only the access point of this lots. The rest would not need to be paved because it was over 500 feet.

Colleen Dowdall stated the difference was that his was an on site access road. His proportional share would be to the entrance to his lots and Mr. Bean's share would be from there back to the entrance to his property.

Ken Jackshaw stated that it should not make a difference that he owns the back lot which would also be accessed from Bagnell Lane. Not taking that back lot into account, the paving for that portion of Bagnell Lane from the entrance of the four lots to the Bean property would be split between 5 lots.

Michael Sehestedt stated this was getting complex because of the proximity of the two subdivisions. He felt that if paving requirements were imposed they should be done as a general plan to address the neighborhood. In just looking at this one subdivision, the most that could be required would be paving to just the access of the four lots that are being divided. Beyond that it serves two residences and falls within the definition of a driveway.

Commissioner Evans stated that the portion of road from the entrance to the Jackshaw Subdivision up to the Bean property should be paved as well and both should participate in paying for it.

Colleen Dowdall stated the Jackshaw's were required to seek a variance for Bagnell Lane. She asked if the Bean Addition also had a variance request for Bagnell Lane as well.

Nancy Heil stated they do have a variance request for Bagnell Lane.

Ken Jackshaw asked if the fire department would require the road to be paved to 24 feet.

Scott Waldron stated that if the County were to take over the road, it would have to be to County standards, which is 24 feet. A problem he has is that these variances for road width tend to become standards. If the variance is granted, it will never become a County road and will not be maintained and the cost of maintenance will fall to the property owners. He would like to see it paved to the full 24 foot width and eventually made a County road so the fire district could count on snow removal.

Colleen Dowdall stated the road has not been offered as a County road and was not reviewed for that purpose and it is not required that the applicant's dedicate the road. It would be hard to make findings that this is required or benefits the County. The discussion on dedication could take place at a later date. Today's discussion concerns the paving width requirements for a private road. Even if it is paved there is still a variance request for the width of Bagnell Lane and the Commissioners have to act on that. The nature of improvements is the subject of another variance request, including paving.

Commissioner Evans stated that if it is required for the road to be paved, that does not mean that asphalt is just put down on a road that may be sub-standard. For their benefit, it should be brought to County standards so it can be accepted as a County road.

Colleen Dowdall stated it did not make sense to evaluate at this point whether this is wanted as a County road. The rule for private roads is that the plans have to be submitted to the County Surveyors Office for approval. The County would have no jurisdiction over the road after paving, it is a private road.

Scott Waldron stated his concern is that a variance to the Subdivision Regulation of 24 feet is always being requested and it is becoming the standard. Every subdivision requests a variance to 22 feet. At some time in the future, someone is going to have to account for upgrading those roads to 24 feet and County standards.

Colleen Dowdall stated because it is a private road, the improvements would have to be done prior to plat filing. If the improvements were not done the plat would not get filed, which is the County's best legal remedy. She felt most variances for road width were access road that are already built. In granting this variance request, the Commissioners should look at the use this road has and how much use it has the potential for. That is probably the basis for recommending the approval of the width variance. It isn't a road whose use will grow significantly in the future. By stating the road should be 24 feet for fire safety purposes, there is a basis for denying the variance.

There being no further comments, the public hearing was closed

Commissioner Evans moved that the Board of County Commissioners deny the variance request from Articles 3-2(3) and 3-2(10) of the Missoula County Subdivision Regulations for Bagnell Lane to vary from the required 24 foot width to the existing 20-22 foot width, based on the findings of fact set forth in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners deny the variance request from Articles 3-2(3) and 3-2(10) of the Missoula County Subdivision Regulations for paving of Bagnell Lane, conditioned on Mr. Bean's proportional participation of the cost of such paving, based on the findings of fact set forth in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(1)(I) of the Missoula County Subdivision Regulations for the shared driveway easement to vary from the required paved 54 foot total width to a 30 foot total width, based on the findings of fact set forth in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision, based on the findings of fact set forth in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve the Fairfax Estates Lot 2 Second Summary Subdivision, with the amended language of Condition 2 regarding paving, based on the findings of fact in the staff report and subject to the conditions in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Fairfax Estates Lot 2 Second Summary Subdivision Conditions of Approval:

1. The following statement shall appear on the face of the plat and in each instrument of conveyance:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for improvements to the Frenchtown Frontage Road, including installation of pedestrian walkways or bikeways, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land." *Subdivision Regulations Article 3-2 and County Surveyor recommendation.*

2. Bagnell Lane shall be improved to a 24 foot width. The turnaround shall be improved in a design to be approved by the County Surveyor's Office and Frenchtown Rural Fire District prior to plat filing. Engineering and drainage plans for the road shall be approved by the County Surveyor's Office prior to plat filing. A road sign shall be placed at the intersection of Bagnell Lane and the Frenchtown Frontage Road prior to plat filing. The

paving will occur to the entrance to the subdivision. However, if Bean Addition Second Summary Subdivision is approved and is required to pave a portion of Bagnell Lane, then the paving shall be for the entire length of Bagnell Lane, with the developer paying 5/6 of the cost for improving and paving the entire road. *Subdivision Regulations Article 3-2 and Frenchtown Rural Fire District recommendation.*

3. The County Surveyor shall approve drainage plans for the site prior to plat filing. *Subdivision Regulations Article 3-4.*

4. The following statement shall appear on the face of the plat and in each instrument of conveyance:

“Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for public water systems, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land.” *Subdivision Regulations Article 3-7(2) and Frenchtown Rural Fire District recommendation.*

5. The lot owner shall contribute \$100.00 per new lot to the Frenchtown Rural Fire Department prior to plat filing. *Subdivision Regulations Article 3-7(1) and Frenchtown Rural Fire District recommendation.*

6. The Bagnell Lane road maintenance agreement shall be approved by the County Attorney’s Office prior to plat filing. *Subdivision Regulations Article 3-2(1)(H) and staff recommendation.*

Hearing: Bean Addition (5 lot Subdivision) – Northwest of Huson on Bagnell Lane

Chairman Carey opened the public hearing.

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

This proposal is to divide Lots 4 and 5 of the original Fairfax Estates Subdivision into five lots ranging in size from 1.0 to 2.7 acres. The property is located off the I-90 Frontage Road and Bagnell Lane and View Crest Drive, 3/4 mile west of the Huson Interchange.

The Fairfax Estates subdivision, approved by the Board of County Commissioners in 1995, created 5 lots. Lots 2-5 are approximately 4 acres in size. Lot 1 is 7.4 acres in size. The current proposal is to further divide Lots 4 and 5 of Fairfax Estates. Another applicant is also proposing the redivision of Lot 2, called Fairfax Estates Lot 2 Second Summary Subdivision.

The property is unzoned and the Comprehensive Plan recommends open and resource land use with a density of one dwelling unit per 40 acres. The property is within the Huson Activity Circle which is designed as the location where any new development should occur. There is currently one occupied home and several other buildings on the property. There are no covenants proposed. The existing home is accessed from the I-90 Frontage Road to Bagnell Lane. No additional use of Bagnell Lane is proposed and staff recommended approval of a variance request for width and paving for Bagnell Lane. Planning Board recommended denial of the width variance and approval of the paving variance for Bagnell Lane for the Bean Subdivision.

There is currently no formal road maintenance agreement for Bagnell Lane and Condition 8 requires that a road maintenance agreement be provided. The proposed access for Lots 4A, 5A, 5B and 5C is from View Crest Drive to Calamity Lane. View Crest Drive is an unpaved, County maintained road. The width on that road varies from 20-22 feet and Condition 2 includes an RSID waiver for improvements to View Crest Drive. Calamity Lane is an existing private access road that is located within a 60 foot easement and the width through the property varies from 15-22 feet. The road grade through Lot 5A is about 10% throughout. The road is maintained by the property owners to the north and Condition 8 requires that the developer demonstrate that snow plowing and dust abatement are included in that road maintenance agreement.

At the Planning Board hearing, the applicant, Robert Bean, proposed an amended access plan where Lots 5A, 5B and 4A would share an access. The proposal would be to improve Calamity Lane to 24 feet to that access point. Because this was a slightly amended proposal, the Planning Board addressed slightly different motions that are in the staff report. The Request for Commissioner Action form reflects those changes.

Planning Board recommended denial of the paving variance for Calamity Lane from View Crest Drive to the access point of those three lots. Planning Board recommended approval of a width variance from the access point further north. Their recommendation was that Calamity Lane be paved to a 24 foot width from View Crest Drive to the access point for Lots 5A, 5B and 4A.

The Subdivision Regulations state that no lot can be divided by an existing right-of-way. Calamity Lane does split Lot 5A. Both staff and Planning Board recommended approval of a variance request from that requirement. That road easement was established prior to Mr. Bean’s purchase of the property and all of Lot 5A that would be in the northwest corner of the property has slopes greater than 25% and would not be buildable if it were its own lot.

There are drainage plans included with the application package. There is a low spot along the boundary between Lot 4A and 4B that collects runoff. That is directed to a swale and then to a dry well. Condition 4 requires Surveyor approval of drainage plans prior to plat filing. Condition 7, related to the pedestrian access easement at the southern end of Lots 4B and 5C, require that easement be maintained and clear of obstructions.

The proposal is for Lots 4B and 5C to share a well. Lots 5A, 5B and 4A will have individual wells. There is a well easement on the border line between Lots 5A, 5B and 5C that serves the property to the north.

As with the last subdivision, there is no parkland requirement as that was provided with the underlying subdivision. The same conditions related to fire, the \$100 per lot water supply fee and the RSID waivers for water systems have been recommended for this proposal. Condition 7 requires a development covenant addressing measures to minimize human/wildlife impacts.

OPG received three letters from neighborhood residents commenting on the proposal. The issues of concern that are address in subdivision review include road maintenance, walkways and utility easements. There were some other issues that included storage of trailers on the site, well and sewer locations and lack of proposed covenants.

Planning Board's recommended Motion #1 relates to the right-of-way easement splitting Lot 5A, Motions #2 and #3 relate to paving and width of Calamity Lane, Motions #4 and #5 relate to Bagnell and Motion #6 is for the subdivision itself. Planning Board recommended a slight amendment to Condition 3 based on the change in the access design and their recommendations related to paving.

John Kellogg, Professional Consultants Incorporated, developer's representative for Robert and Cindy Bean, was present, as was the applicant, Robert Bean. He highlighted some concerns. The change in Condition 3 states that Calamity Lane be improved to 24 feet to the turnaround. The concerns that Scott Waldron had were with the slope back to the Johnson property. The access via Calamity Lane is 10% or less and is the reason for the redesign of the roadway. Mr. Bean is willing to widen and improve that portion of Calamity Lane from View Crest Drive to the turnaround. The access to Lot 4A would be from a driveway from that turnaround. The access to Lots 5A and 5B would be at the turnaround. They are in agreement with staff recommendation to grant a variance for a paving requirement for Calamity Lane and believe that it doesn't make sense to have a short stretch of paved road with a gravel road on either side. The initial subdivision of Fairfax Estates included three sites that would access Bagnell Lane. Mr. Bean is not adding to that, he is using an existing access. His proportionate share could be worked out with Mr. Jackshaw.

Commissioner Evans asked about the potential for an RSID for paving of View Crest Drive, including the Hidden Hills Subdivision?

Michael Sehestedt stated as a result of the original Fairfax Estates, there is a waiver of protest for an RSID for the purposes of paving View Crest Drive.

Nancy Heil stated the condition of approval read: "...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 improvement, including participation in a dust abatement district, for View Crest Drive ... further, that property owners developing property and using View Crest Drive are responsible for dust abatement during construction."

Michael Sehestedt stated that waiver of protest can be used to create a dust abatement RSID, using an ongoing magnesium chloride treatment district, he would prefer paving, however. This waiver cannot be used to address dust abatement or paving on all of View Crest Drive, but it will go for some distance, assessing both this property and other property on View Crest Drive to deal with dust abatement. That would go a long way toward reducing the dust in this area in general. The RSID for dust abatement would be of some value to this property. It would be a straight maintenance RSID, with the County levying the money and letting the contract. The Johnson brothers have 20 acre tracts and would not be included. If they wish to re-subdivide in the future, they could possibly be included in the district, however, most of their property is accessed from Calamity Lane. He did not want to make the district too big. There has been a real effort to have the requirement to address the dust issue on many of the subdivision in the area.

Commissioner Evans asked if the developer had to initiate this RSID request?

Michael Sehestedt stated the County could do this themselves.

Scott Waldron asked if it could be a requirement that street signs that meet Subdivision Regulations be put up in all subdivisions County wide. His fire department has a hard time finding some of them because of a lack of signs.

Nancy Heil stated that signs for this subdivision were included in Condition 3. There was also a requirement on the previous subdivision.

Chairman Carey asked if there was a policy in place for signage?

Colleen Dowdall stated it was not a part of the Subdivision Regulations at this time. However, in many recent subdivision, signage has been requested by the appropriate fire districts. She suggested that Missoula County Fire Protection write a letter stating their request for signage.

Nancy Heil stated that while signage is not in the regulations, OPG regularly looks at the issue.

Robert Bean asked if he was to put up a sign on Bagnell Lane?

Nancy Heil stated it was a condition for Mr. Jackshaw to put up a sign for Bagnell Lane.

Horace Brown stated the Surveyor's Office has always required the developer to put up road signs.

Scott Waldron stated that has not always been happening, especially in the Frenchtown area. He felt it would be appropriate to add it to the Subdivision Regulations.

Robert Bean stated that the County would initiate a dust abatement RSID that he would be required to participate in. He felt that was a reasonable solution.

Commissioner Evans stated that dust abatement was an annual process, whereas paving would not require annual maintenance.

Robert Bean stated he would be willing to participate in an RSID for paving as well.

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

Commissioner Evans asked if it could be clarified in Condition 5 that the RSID waiver for water systems included fire protection, not just drinking water.

Colleen Dowdall stated the findings support that the water system includes water for fire protection. The authority for the RSID waiver is under the section for fire protection.

Nancy Heil stated that she did not favor putting "included" unless all the various criteria were listed so as to not leave anything out. The intention is for fire fighting water.

Commissioner Evans stated the way it is currently worded implies it is for drinking water. It is not explicit regarding fire protection.

Scott Waldron stated the Subdivision Regulations recognize the Uniform Fire Code. That would be the easiest way to include water for fire protection purposes.

Colleen Dowdall stated an addition could be made to Condition 5 that states "... for public water systems adequate for fire protection ..."

Chairman Carey stated he was inclined to support staff's finding to not allow the variance on View Crest Drive.

Nancy Heil stated View Crest Drive was not the subject of any variance request for this subdivision. The two roads in question are Calamity Lane and Bagnell Lane.

Chairman Carey stated paving was required on that portion of Calamity that goes to View Crest Drive. The Health Department also wanted paving on that road.

Colleen Dowdall stated staff did not recommend paving be required on this portion of the road because there would be paving with a gravel road on either side of it which would not last very long because of the grade. The road would have excess wear and tear.

Horace Brown stated that road would also have required chip sealing to be safe due to the grade.

Chairman Carey stated the Planning Board sided with the notion that View Crest Drive will sooner rather than later be paved to Calamity Lane.

Colleen Dowdall stated the discussion today was regarding the RSID waiver for dust abatement but not for paving.

Chairman Carey stated Mr. Bean would be willing to look at contributing toward paving.

Colleen Dowdall stated perhaps the condition be that Calamity Lane be paved at the time View Crest Drive is paved.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-3(1)(D)(2) of the Missoula County Subdivision Regulations which states that no lot shall be divided by a public street, road, alley, existing right-of-way or easement, based on the findings of fact set forth in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners deny the variance request from Articles 3-2(3) and 3-2(10) of the Missoula County Subdivision Regulations for paving the portion of Calamity Lane from View Crest Drive leading up to and including the cul-de-sac turnaround. This portion of Calamity Lane will be paved at the same time View Crest Drive is paved, to which it would connect, based on the findings of fact set forth in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Articles 3-2(3) and 3-2(10) of the Missoula County Subdivision Regulations for the portion of Calamity Lane beyond the turnaround to vary from the required 24 foot width to the existing condition, based on the findings of fact set forth in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners deny the variance request from Articles 3-2(3) and 3-2(10) of the Missoula County Subdivision Regulations for Bagnell Lane to vary from the required 24 foot width to the existing 20-22 foot width, based on the findings of fact set forth in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners deny the variance request from Articles 3-2(3) and 3-2(10) of the Missoula County Subdivision Regulations from the requirement to pave Bagnell Lane, conditioned on Mr. Jackshaw's proportional participation of the cost of such paving, based on the findings of fact set forth in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve the Bean Addition Second Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report, with amendments to Condition 3 and Condition 5 and the addition of Condition 9. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Bean Addition Second Summary Subdivision Conditions of Approval:

1. Slopes greater than 25% shall be shown on the plat as no-build zones. *Subdivision Regulations 3-1(2) and staff recommendation.*
2. The following statement shall appear on the face of the plat and in each instrument of conveyance:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for improvements to View Crest Drive, including installation of pedestrian walkways or bikeways, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land." *Subdivision Regulations Article 3-2 and County Surveyor recommendation.*

3. A road sign for Calamity Lane shall be placed at its intersection with View Crest Drive prior to plat filing. Calamity Lane shall be improved to a 24 foot width to the point of access for Lots 5A, 5B and 4A. Engineering and drainage plans for the road shall be approved by the County Surveyor's Office prior to plat filing. The design for the turnaround shall be approved by the County Surveyor's Office and Frenchtown Rural Fire District prior to plat filing. *Subdivision Regulations Article 3-2 and Frenchtown Rural Fire District recommendation.*
4. The County Surveyor shall approve drainage plans for the site prior to plat filing. *Subdivision Regulations Article 3-4.*
5. The following statement shall appear on the face of the plat and in each instrument of conveyance:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for public water systems adequate for fire protection, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land." *Subdivision Regulations Article 3-7(2) and Frenchtown Rural Fire District recommendation.*
6. The lot owner shall contribute \$100.00 per new lot to the Frenchtown Rural Fire Department prior to plat filing. *Subdivision Regulations Article 3-7(1) and Frenchtown Rural Fire District recommendation.*
7. A development covenant shall be filed at the time of plat filing, subject to County Attorney's Office and OPG approval, to include the following:
 - a. Driveways shall be constructed a minimum of 12 feet wide and shall consist of a suitable base material and a minimum of 4 inches of 3/4 minus gravel surfacing. Driveways in excess of 150 feet in length shall have approved turnaround for fire apparatus, an all weather surface width of not less than 20 feet and an unobstructed vertical clearance of 13 feet 6 inches. The all weather surface and unobstructed clearance shall be maintained by individual lot owners that use the driveway. Maintenance shall include dust abatement. Driveway design, location, grade, surface type, and turnaround or turnout locations shall be approved by the Frenchtown Rural Fire District prior to any construction.
 - b. A maintenance agreement for shared portions of private driveways shall provide for snow removal, grading, drainage, and maintenance of the all weather surface and unobstructed clearance. Maintenance shall also include dust abatement.
 - c. Covenants related to driveways are enforceable by Missoula County by any action required to compel performance, including injunction, suit for damages or by refusal to provide fire protection and emergency service, until driveways are brought to these standards.
 - d. The pedestrian walkway easement along the southern boundary of Lots 4B and 5C shall be maintained and remain free of obstructions.
 - e. A statement that homeowners accept responsibility for living with wildlife and are responsible for protecting their vegetation from damage, confining pets and properly storing garbage and other attractants and that the artificial feeding of wildlife is prohibited. The development covenant shall address "Living with Wildlife" issues including proper storage of garbage, animal food storage, pets, barbecue pits, garden fences, compost piles, and apiaries. *Subdivision Regulations Article 3-2(6), 3-2(5), 4-1(12) and staff recommendation.*
8. The developer shall provide evidence of a road maintenance agreement for Bagnell Lane, subject to County Attorney's Office approval, prior to plat filing. The developer shall provide evidence that road maintenance for Calamity Lane includes snow plowing and dust abatement prior to plat filing. *Subdivision Regulations Article 3-2(1)(H) and staff recommendation.*
9. The entire length of Bagnell Lane shall be widened and paved to a width of 24 feet. The developer shall pay for 1/6 of the cost of the improvements.

Nancy Heil stated a letter was received from a neighbor regarding the Planning Board hearing. They felt their testimony was not being taken into consideration when the Planning Board made their decision.

Chairman Carey asked Nancy Heil to respond in writing to their letter.

Commissioner Evans stated that Mr. Bean had no covenants on his subdivision. She hoped he would do what was necessary to ensure a good subdivision.

Robert Bean stated he understood Commissioner Evans' concerns and he had given some thought to adding covenants to the subdivision to protect its development.

Ken Jackshaw stated he wanted to be sure there was adequate time to get Bagnell Lane paved. He would like to file the plat as soon as possible.

There being no further business to come before the Board, the Commissioners were in recess at 3:25 p.m.

THURSDAY, JANUARY 13, 2000

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

Claims Lists -- Commissioners Carey and Evans signed the Claims Lists, both dated January 13, 2000, batch numbers 417 and 430, with a grand total of \$48,317.62 and batch numbers 431 and 432, with a grand total of \$8,027.21. The Claims Lists were returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Letter of Request -- The Commissioners approved a Letter of Request for a Motor Vehicle License refund written by Crystal Lemon of Jolly Wholesale, Inc. for a vehicle donated to the University of Montana Athletic Program. The document was returned to Vickie Zeier, Clerk and Recorder Treasurer, for further handling.

Application -- The Commissioners approved an Application for Personal Property Tax Refund from Reed Construction Company, Inc. The total refund amount will be \$2988.58. The document was forwarded to Vickie Zeier, Clerk and Recorder Treasurer, for further handling.

Counter Offer -- The Commissioners approved a Counter Offer from Todd Construction for the purchase of Lot 7, Block 13, Missoula Development Park. The total offer amount will be \$184,000.00. The document was returned to Barbara Martens, Project's Office, for further handling.

Letter of Intent -- The Commissioners signed a Letter of Intent from John Coffee, Jerry Ford and Bill McQuirk of Lambros Realty to purchase Pegasus Properties, Parcel 1 of Certificate of Survey No. 4884 in the S1/2 of Section 17, T 13 N, R 19 W, PMM, Missoula County. The closing date will be 30 days after satisfaction or waiver of the Condition of Purchase. The purchase price will be \$1,300,000, with an additional down payment of \$475,000.00 and a balance of \$800,000.00 to be paid in full three years from the date of purchase.

Resolution -- The Commissioners signed Resolution No. 2000-005, an annexation of the Missoula Rural Fire District for a tract of land located in the E 1/2 of the SW 1/4 and Government Lot 3 and Lot 4 of Section 30, T 13 N, R 20 W, PMM, Missoula, Montana (Upper O'Brien Creek Area).

Resolution -- The Commissioners signed Resolution No. 2000-006, a Resolution to zone property commonly known as the "Big Hill" portion of the Maloney Ranch (Lots 2, 3, 4, 6 and 12 and those portions of Lots 1, 5, 7 and 8 of COS #4815, lying south of the southerly boundary of the "C-A3" Zoning District located in Sections 14, 15, 22, 23 and 24, T 12 N, R 20 W, PMM, Missoula County) from unzoned 10 "C-A1."

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

FRIDAY, JANUARY 14, 2000

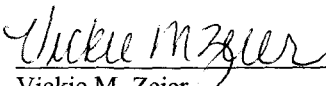
The Board of County Commissioners met in regular session; all three members were present.

Professional Service Contract -- The Commissioners signed a Professional Service Contract with Emery Computer in order to obtain the product of the expertise and effort of the Contractor. The term shall be January 20, 2000 through January 20, 2001. The total amount shall not exceed \$1,900.00 for items 2. A., b., c., d. and e. listed in contract, \$40.00 per hour for item 2., f. listed in Contract and \$50.00 per hour for items 2., g. listed in Contract.

Review -- The Commissioners examined and approved a Review of the Juvenile Detention Commissary by the Missoula County Auditor's Office. The document was forwarded to Clerk and Recorder's Office for filing.

Resolution -- The Commissioners signed Resolution No. 2000-007, a Budget Amendment for the Detention Center in the amount of \$2,000.00 for FY00.

Resolution -- The Commissioners signed Resolution No. 2000-008, rescinding Resolution No. 99-073, consolidating the offices of the Clerk of the District Court and the County Clerk and Recorder/Treasurer.


Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chairman
Board of County Commissioners

MONDAY, JANUARY 17, 2000

The Board of County Commissioners did not meet in regular session. The Courthouse was closed for Martin Luther King, Jr. Day.

TUESDAY, JANUARY 18, 2000

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

Claims List -- Commissioners Carey and Evans signed the Claims List, dated January 18, 2000, batch number 439, with a grand total of \$156,394.40. The Claims List was returned to the Accounting Department.

Indemnity Bond -- Chair Carey examined, approved, and ordered filed an Indemnity Bond naming Ikon as principal for Warrant #50675 issued August 12, 1998 on the Missoula County General Fund in the amount of \$5,650.00 now unable to be found.

Indemnity Bond -- Chair Carey examined, approved, and ordered filed an Indemnity Bond naming Heritage Printing as principal for Warrant #54174 issued November 15, 1999 on the Missoula County Urban Transportation Fund in the amount of \$430.90 now unable to be found.

Indemnity Bond -- Chair Carey examined, approved, and ordered filed an Indemnity Bond naming Julie Hyde as principal for Warrant #73187 issued December 29, 1999 on the Missoula County Public Schools Payroll Fund in the amount of \$396.66 now unable to be found.

ADMINISTRATIVE MEETING

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

Continuation Grants -- Chairman Carey signed two Continuation Grants with the Montana Board of Crime Control for Missoula Correctional Services (Misdemeanor Program and Pre-Trial Program). The term for both will be July 1, 2000 through June 30, 2001. The documents were returned to Sue Wilkins at Missoula County Correctional Services for further handling.

Proposal/Lease Termination -- The Commissioners approved a Proposal from Bob Ranney, carpenter and builder, to exchange work for rent at the LaLonde Ranch (Missoula Development Park); therefore, terminating the lease of the current renter, Steven Sivak, and recommending that his past rental dues of \$2,400.00 be paid back by February 18, 2000. The document was returned to Barb Martens in the Projects Office for further handling.

Letter -- The Commissioners approved a Letter to Richard P. Weiland, Regional Director of FEMA Region VIII, requesting assistance in fixing the flooding problem in the Mullan Trail Subdivision. The document was returned to Brian Maiorano in OPG for further handling.

Letter of Intent -- The Commissioners approved changes to the Letter of Intent from John Coffee, Jerry Ford and Bill McQuirk of Lambros Realty regarding the purchase of Pegasus Properties, Parcel 1 of Certificate of Survey No. 4884 in the S1/2 of Section 17, T 13 N, R 19 W, PMM, Missoula County. The closing date will remain at 30 days after satisfaction or waiver of the Condition of Purchase. The purchase price will now be 1,200,000, with an additional down payment of \$375,000.00 and a balance of \$800,000.00 to be paid in full four years from the date of purchase. The document was returned to John Coffee at Lambros Realty.

Claim -- The Commissioners approved a Claim from Robert Emmons, Attorney at Law, Great Falls, Montana for Services Rendered regarding the consolidation of the Clerk of District Court in the amount of \$1,417.50.

Memorandums of Agreement -- The Commissioners signed two Memorandums of Agreement with the Missoula Correctional Services, Inc. to fund the Misdemeanor Supervision Program for the total sum of \$145,513.58 with the term of July 1, 1999 through June 30, 2000; and the Community Service Program for the total sum of \$86,639.00 with the term of July 1, 1999 through June 30, 2000.

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

WEDNESDAY, JANUARY 19, 2000

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

Claims List -- Commissioners Carey and Kennedy signed the Claims List, dated January 18, 2000, batch numbers 433, 434, 435, 436, 437 and 438, with a grand total of \$187,800.14. The Claims List was returned to the Accounting Department.

PUBLIC MEETING -- January 19, 2000

The Public Meeting was called to order at 1:35 p.m. by Chairman Bill Carey. Also present were Commissioner Barbara Evans, Commissioner Michael Kennedy, County Surveyor Horace Brown, Deputy County Attorney Colleen Dowdall and Chief Civil Attorney Michael Sehestedt.

Public Comment

None

Routine Administrative Actions

Commissioner Kennedy moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$400,539.37. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Hearing: Request to Vacate a Portion of Clearwater Shortline Railroad Right-of-Way Along Highway 12 West (Lolo Creek)

Chairman Carey opened the public hearing.

This is a petition to abandon "portions of the former Clearwater Short Line Railroad Company right-of-way along Lolo Creek in Section 36, Township 12 North, Range 22 West in Missoula County, Montana."

The reasons for the request are as follows:

1. The Clearwater right-of-way only duplicates the route of U.S. Highway 12 in Section 36, and the Clearwater right-of-way is in the same location as U.S. Highway 12 at both the east and west sides of the Section.

2. As required by MCA 7-14-2615(3) and (4), the Clearwater right-of-way does not provide access to any public land or private land which cannot also be accessed by U.S. Highway 12, with the exception of the land owned by Amidnamin Manoocheche (Mike Amidi), which has other sources of legal access.
3. The abandonment of the Clearwater right-of-way will help the landowners along the right-of-way remove a cloud from title to their properties.

The following landowners have been notified:

Charles T. & Kimberly A. Satterlee, Ivy Family Living Trust, Gary R. & Dorothy M. Cooper, Ronald S. & Janice Henderson, Debra Bowey, Potomac Corp., Amidnamin Manoocheche, Willard N. Morgan, State of Montana, Bob Storer, The Burlington Northern and Santa Fe Railroad Company.

Horace Brown stated this is a request to vacate a portion of the old Short Line Railroad that runs up Lolo Creek. This is on private land and is not accessible from the highway and is probably not needed by the State, however, the State does need to be contacted to make sure they don't require the right-of-way.

Peter Dayton, Worden, Thane & Haines, stated he is representing the Ivys who own land on the north side of U.S. 12. The Clearwater Short Line Railroad right-of-way runs through the Ivy's property. The railroad and highway right-of-ways through Section 36 are in the same place at both the east and west side of the Section but are separate in the middle of the Section. The problem is there are a number of landowners who own land whose legal description goes all the way to the highway. Their title policies don't show anything about this railroad right-of-way, but it has been discovered that the right-of-way does go through their property. That is why this petition has been filed, to abandon the County's easement over the railroad right-of-way. In December, the right-of-way that runs through Sections 35 and 26 was also abandoned. When this abandonment is complete, quiet title action can be initiated to get rid of the railroad's interest in the right-of-way. Most of the right-of-way is owned in fee by Burlington Northern Santa Fe Railway. About 1/4 mile on the west side is an easement through property owned by the State of Montana. When the State granted that easement, it noted that if the right-of-way was not used for a railroad, it would revert to the State of Montana. The abandonment of this right-of-way will not affect anyone's access, with one exception. The exception is Mike Amidi who owns land in the northwest corner of the section. The highway dips away from his property and there is a sliver of State land between him and the highway. He is familiar with the situation and he has legal access through the County roads that run through the north end of the section. He consents to this action and has signed the petition.

Commissioner Kennedy asked about a small piece on the westerly edge of this. If the County abandons their right to that, did it still revert to the State of Montana?

Peter Dayton stated the State could have claimed it reverted years ago because it was never used as a railroad. That means all the State has to do is file a claim to get the right back. That still leaves the remaining 3/4 of a mile that would require quiet title action on. There are several landowners present today who support this petition and are eager to clear up their titles as well.

Commissioner Kennedy asked if the County's easement overlapped the State's interest in the property on the westerly quarter mile?

Peter Dayton stated that was correct. The County has an easement over the railroad right-of-way and, with respect to the last quarter mile, the State of Montana has a right of reverter. By abandoning the County easement, it clears the way for the State to reclaim their easement. Horace Brown had mentioned the possibility of the State having an interest in this. The State highway right-of-way is also involved in this matter. There was a deed recorded in 1940 in which Missoula County granted to the State all its rights in the portions of the Clearwater Short Line Railroad right-of-way that were inside the highway. Nothing is being done with this action that would affect the interest of the State, just removing the old County road right-of-way, which duplicates the State Highway right-of-way.

Commissioner Evans stated if after the County grants this abandonment, do the residents expect the State to grant access across it, or would that be necessary?

Peter Dayton stated there is a small sliver of fee land that goes all the way to the edge of the section. If this reverts to the State, they will own the entire quarter quarter. Willard Morgan's driveway comes off in the southwest corner so he has access. The rest of the people have property all the way to the road, so they have access. Mike Amidi owns the eastern 3/4 of this quarter quarter, and there is a small portion of State land between his property and the road. He has legal access via the old County rights-of-way. He is not concerned but may need to get an easement from the State for access to his property. He has, however, signed the petition.

Horace Brown stated the State should be notified and make sure they don't have other interests they may need this right-of-way for before the County vacates it.

Commissioner Evans asked if Peter Dayton explained the abandonment process to the petitioners. By law, the site must be inspected by one Commissioner and the County Surveyor before they can make the decision. They can't take action today, it is just the first step in the process.

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

Michael Sehestedt stated if the State was to be contacted for comment on this matter, he suggested keeping the hearing open until that comment has been received.

Chairman Carey thanked Michael Sehestedt for his comments and reopened the public hearing.

Commissioner Evans asked who should be contacted at the State?

Michael Sehestedt stated it should be routed to Jim Weaver, the District Engineer. He can get it to the appropriate person. The Commissioners would schedule a time to inspect the site and reconvene in two weeks, on February 2, 2000, to make their decision. At that time, any comment the State might wish to make will be presented.

Consideration: Gooden Acres (3 lots) – Houle Creek – Northwest of Frenchtown

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

Wade and Heather Gooden, represented by Eli & Associates, have requested to create Gooden Acres, a 3 lot summary subdivision located to the east of Houle Creek Road. The proposal would split a 19 acre parcel and create two lots approximately 5 acres each and one lot approximately 10 acres. The property is primarily rolling grass land with a dry gully at the southwestern corner and a forested hillside on the eastern edge. There is one house under construction on Lot 2.

The property is unzoned and the 1975 Missoula County Comprehensive Plan designate the parcel as rural low density residential, with a recommended density of one dwelling unit per 10 acres. Lots in the area generally range in size from 5 to 10 acres with some larger parcels. Most of the surrounding land uses are residential and agricultural. Although the proposal is not entirely consistent with the recommended density, staff found it to be in substantial compliance with the goals of the Comprehensive Plan for the area.

Most of the key issues for this subdivision focus on roads and access. Houle Creek Road is the main access for the property. Adjacent to the proposed subdivision, it is a County maintained gravel road that meets County road standards. An RSID waiver for improvements to Houle Creek Road is included on the plat.

Commissioner Evans asked if the improvements were for paving or dust abatement?

Karen McElroy stated the waiver was comprehensive in what it included, "... improvements to Houle Creek Road, including the installation of pedestrian walkways or bikeways, based on benefit." From Houle Creek Road, a private drive is proposed to serve the subdivision. The private road would be a 20 foot wide gravel road with 2 foot shoulders within a 40 foot right-of-way, along the northern edge of Lot 1. The applicant has requested a variance to the road surface and right-of-way width for the private road. Staff recommends approval of the variance.

A road maintenance agreement is also part of the protective covenants and Condition 3 requires approval of the road maintenance agreement. The applicant also proposes to leave the private road unnamed, however, the County Surveyor and Frenchtown Rural Fire District have both requested the private road be named, as stated in Condition 1.

Proposed driveways are shown in the application packet. Protective covenants address driveway design meet Rural Fire District standards and as part of Condition 1, staff recommends that Frenchtown Rural Fire District approve emergency turnaround and driveway plans.

The applicant has requested a variance request from Subdivision Regulations that requires the installation of sidewalks. Staff recommends approval of this variance based on the fact that there is a very low volume of pedestrian traffic through the subdivision.

The subdivision will be served by private wells and septic systems. It is part of the Frenchtown Rural Fire District and the nearest fire station is approximately 4.5 miles away. In Condition 5, staff recommends an RSID waiver be placed on the plat for a future water system to ensure fire protection.

Most of the property is rolling grassland with a forested slope and the dry gully that doesn't appear to have any riparian resources. Comments were received from Fish, Wildlife and Parks. They were impressed with the covenants that included a section on living with wildlife. In addition, Bill Otten of Missoula County Weed Control, requested that lot owners be required to maintain lots in compliance with Missoula County's noxious weed control. To address this issue, staff has recommended Condition 6 that includes a revegetation plan be filed with the County.

The applicant has requested three variances from Subdivision Regulations and staff has recommended approval of all three. The first two have been mentioned. The third variance is for Lot 3 which has an average depth greater than 3 times its average width. There are alternative lot designs that could address this issue, but there are a number of topographical constraints that make this variance tolerable. Staff is recommending approval of this variance request. Staff recommends approval of the subdivision, subject to the 6 conditions listed in the staff report.

Chairman Carey asked for public comment.

Ron Ewart, Eli & Associates, developers representative, was present. He thanked OPG for their work on this proposal and they were in agreement with the conditions. Wade Gooden, the owner, was also present. The covenants would not allow any future divisions of Lots 1 and 2. If Lot 3 were divided in the future, it would not use the shared road. The reason for the variance request to the 40 foot right-of-way is that it is not foreseen for more than three homes to use that road. Mr. Gooden plans to build that road this spring. He did not feel there was a need to name the shared driveway but Mr. Gooden was not opposed to naming it if required.

Commissioner Kennedy asked if the mailboxes and addresses would be on Houle Creek Road?

Ron Ewart stated that was correct.

Commissioner Evans stated her concern regarding naming this road was so the fire department could locate the property in the event of an emergency. She agreed with staff that the road should be named and should provide signage so the fire department would know where to go.

Horace Brown stated there was a policy in the County Surveyors Office that three or more homes on a road would necessitate naming the road.

There were no further comments.

Commissioner Evans asked Colleen Dowdall about the RSID waiver for improvements to Houle Creek Road. Was "improvements" all inclusive, would that include a dust abatement district?

Colleen Dowdall stated it was not maintenance of the status quo. She was not sure it would include a dust abatement district. It would include an RSID created to improve the road, such as paving, widening, sidewalks, etc.

Jennie Dixon, Office of Planning and Grants, stated the RSID did not specifically address dust abatement. She would like to think that dust abatement would be considered an improvement to the road.

Commissioner Evans stated because of the dust problems associated with roads in this area, including Houle Creek Road and View Crest Drive, she wanted to make sure the RSID wavier would cover all contingencies.

Colleen Dowdall stated in conversations with Nancy Heil regarding View Crest Drive, she believed the RSID waiver covered both dust abatement and paving. The RSID waiver for this subdivision could be amended to include not only dust abatement, but maintenance in general. She felt there could be the argument made that dust abatement is an improvement to the road. The road maintenance issue would be a change.

Commissioner Evans moved that the Board of County Commissioners approve the variance request to Section 3-2(5) of the Missoula County Subdivision Regulations for the private access road to vary from the required 54 foot right-of-way width and 24 foot road width to the proposed 40 foot right-of-way width and 20 foot road width; approve the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision; and approve the variance request from Article 3-3(1)(E) of the Missoula County Subdivision Regulations to allow a lot with an average depth greater than three times its average width for Lot 3, all based on the findings of fact set forth in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the Gooden Acres Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report, and that the waiver of the right to protest an RSID/SID for improvements to Houle Creek Road on the face of the plat be amended to include dust abatement and that, in Condition 1, the unnamed private drive shall be named and proper signage shall be provided. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Gooden Acres Subdivision Conditions of Approval:

1. The unnamed private drive shall be named and proper signage shall be provided, subject to review and approval by the County Surveyor's office, prior to final plat approval. *Subdivision Regulations 3-2, County Surveyor and Frenchtown Rural Fire District recommendation.*
2. Grading, drainage, driveway and road plans, including emergency vehicle turnaround, shall be reviewed and approved by the County Surveyor's Office, prior to final plat approval. Emergency vehicle turnaround, driveway and road plans shall be reviewed and approved by Frenchtown Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-2, County Surveyor and Frenchtown Rural Fire District recommendation.*
3. The maintenance agreement for the private access easement and shared portions of driveways shall be approved by the County Attorney's Office prior to final plat approval. *Subdivision Regulations Article 3-2(6) and staff recommendation.*
4. The developer shall contribute \$100.00 per new lot to the Frenchtown Rural Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants at the time of final plat approval. *Subdivision Regulations Article 3-7(2) and Frenchtown Rural Fire District recommendation.*
5. The following statement shall appear on the face of the final plat:

"Acceptance of a deed for a lot within this subdivision constitutes a waiver of the right to protest a future RSID/SID for public water system adequate for fire protection, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land." *Subdivision Regulations Section 3-7(2).*
6. A Revegetation Plan for Disturbed Sites shall be approved by the Missoula County Weed Board prior to final plat approval. Provision for implementation of the Plan shall be included in a development covenant to be filed in the Clerk and Recorder's Office, subject to OPG and County Attorney Office review and approval, prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B), Missoula County Weed Control recommendation and staff recommendation.*

Consideration: Montana Vista Phase II (5 lots) – Seeley Lake Area

Allison Hander, Office of Planning and Grants, presented the staff report.

This is a request for a 5 lot subdivision called Montana Vista Phase II on a 4.85 parcel in Seeley Lake on the south side of Airport Road and east of Tamarack Drive. The original Montana Vista Subdivision was approved in December 1996. It was a nine lot subdivision approved in two phases. Phase I was Lots 1 through 8 and that plat was filed in February, 1998. Phase II, which is shown as Lot 9, was approved originally with 12 condominiums on the 4.85 acre parcel. The final plat approval deadline for that original submittal was recently extended by the County Commissioners until December 11, 2000. This new proposal for Phase II has been submitted showing 5 lots, now called Lots 9 through 13, on that same 4.85 acre parcel. It is the applicants, Seeley Lake Real Estate Investments, Inc., intention to construct Phase II as shown. If this application is not approved, they would go back to the original proposal for condominiums.



This proposal is for 5 lots, the smallest of which is .82 acres, the largest is just over 1 acre. The property is unzoned. Immediately east of Montana Vista Phase II is the common area for Montana Vista Phase I, with Morrell Creek forming the easterly boundary of that common area. The property is largely in timber. Access is from Airport Road to a new private cul-de-sac called Vista Court.

The 1989 Seeley Lake Comprehensive Plan amendment doesn't provide land use designations for this area but it does provide a series of community goals. Those include land use goals, residential goals, air quality goals and wildlife goals. Staff reviewed the comprehensive plan with regard to this proposal and found it to be in substantial compliance with those land use goals.

The property has not been used for agricultural production, it is largely in timber, so no impacts to agricultural uses are foreseen. The proposal is to access the subdivision by Vista Court, a new private cul-de-sac road, proposed to be paved to a width of 20 feet. A variance request for road width has been requested and staff supports the variance request. Airport Road is to the north of the subdivision. It has a 26-28 foot paved width and is a County maintained public road. A paved pedestrian path was recently built on the north side of that road and the preliminary plat for this subdivision has an RSID waiver statement for road improvements and pedestrian facilities for Tamarack Drive and for Airport Road.

Lot 13, the southeasterly most lot, is served by a private driveway. The driveway is proposed to be 15 feet in width but the regulations require a width of 27 feet. A variance has been requested. Since the property is in an area of wildland/residential interface, there was a concern for emergency vehicle access. Staff supports the request for the variance, but not to 15 feet, instead to 20 feet, to make sure there is adequate emergency vehicle access.

Airport Road has a recently built pedestrian walkway. When Montana Vista was approved in 1996, it was approved with a 5 foot paved pedestrian walkway on the Tamarack Drive frontage of Lot 4 through 8 of Phase I and the south side of Airport Road from Tamarack Drive to Vista Court. That condition has yet to be satisfied and the applicant proposes to construct that walkway when Vista Court is constructed. Staff finds compliance with the pedestrian access requirement.

Water is provided by Seeley Lake Water District. The subdivision will have individual septic systems. The fire department has a couple of requests that have been added to the conditions. Since the property is in an area of wildland/residential interface, there are some concerns with fire hazards in the area. It was noted that the covenants include fairly detailed provisions regarding how to minimize fire danger. Staff recommended the covenants should also include a provision that Section 14 not be amended without approval from the governing body, as noted in Condition 6.

The fire department recommended that a fire hydrant be placed, that street signs be placed and addresses assigned and that the addresses be given to the fire department to facilitate provision of emergency access. Those requests are addressed in Condition 3.

Morrell Creek flows along the easterly boundary of the common area of Montana Vista Phase I. It doesn't cross this property but it is important to note that crossing this property there is a steep bank going down Lots 10, 12 and 13. There is some riparian vegetation on the easterly part of the property. To the east of that bank is designated a no build zone to protect the riparian vegetation. A riparian management plan was submitted with Phase I and has been carried over into this subdivision as well. The Weed District had noted there are light to moderate infestations of spotted knapweed in the area and that road construction would create a significant ground disturbance. They have recommended a revegetation plan be submitted as noted in Condition 7. The section of the covenants regarding the riparian management plan also are not be changed without governing body approval.

Staff recommends approval of the subdivision and both variance requests, subject to the 7 conditions as noted in the staff report.

Chairman Carey asked for public comment.

Ron Ewart, Eli & Associates, developer's representative, was present. He thanked Allison Handler for her work on this report. They were in agreement with the conditions. The developers of this subdivision, Seeley Lake Real Estate Investments, Inc., is comprised of some local residents who pooled their money to do some nice development. Present today from that group are Bud Anderson, John Bewick and Emery Johnson. As Allison Handler stated, this is a revision to a prior proposal which included 12 condominiums. The proposal is now for 5 single family homes and certain sections of the covenants needed to be amended to reflect that change. The applicants are trying to preserve the rustic, woodsy feel of the Seeley Lake area with this subdivision. Over 9 acres of common area along Morrell Creek were granted with the Phase I and that will remain unchanged. These properties will be similar to Double Arrow to the south. Further east toward Seeley Lake there are many smaller quarter acre lots. The residents are trying to get a sewer district formed for that area. Tamarack Drive, as well as the power lines, are being moved to the east. When that move is complete, the 5 foot pedestrian walkway will be installed. The plan is to do the walkway along Tamarack Drive and Airport Road and to build Vista Court all at the same time. There is a water main down Tamarack Drive. There is a hydrant at the southwest corner of Lot 8 of Phase I. Another hydrant will be installed on Vista Court. Approval from the Seeley Lake Fire District is necessary for the location of the hydrant and approval from the Seeley Lake Water District on the water plans. If water is taken from Airport Road, a 10 foot easement on either side of the common boundary between Lots 11 and 12 to serve Lot 13 will be shown.

Commissioner Kennedy asked if there would be any problem with including a waiver of the right to protest inclusion in the proposed Seeley Lake sewer district.

Ron Ewart stated that would not be a problem. If it is not already on the plat, it will be included.

Commissioner Kennedy asked if that could be included as a new condition.

Allison Handler asked if the language on the plat of the RSID statement should say "public sewer" instead of "community sewer"?

Commissioner Kennedy asked counsel if there was a problem with including the waiver on this plat?

Colleen Dowdall stated the issue was not discussed with regard to this subdivision. She was not aware that Seeley Lake had a sewer system in the works, only a water system.

Commissioner Kennedy stated they have been working on a public sewer district for years. The developers of this property have stated they are not opposed to a waiver and he wondered if that should be included on this subdivision. He would prefer a waiver be included.

Colleen Dowdall stated the language on the plat is the language required by the water quality district and is not appropriate outside the water quality district. She did not know if that could be enforced. She did not object to adding language to the plat but it would put the County in a tough position to enforce it. Whether it says "community sewer" or "public sewer," it probably doesn't matter, the two are probably synonymous under the Sanitation and Subdivision Act.

Commissioner Kennedy stated the no build zone used the edge of the bench as a definition, was that correct?

Ron Ewart stated that was correct.

Commissioner Kennedy stated there is a photograph showing a tree stump in Morrell Creek. This makes it clear that Morrell Creek moves and it is likely there will not be a clear definition for the bench as it will also move. He hoped that it was understood that as the creek moves and the bench is eroded, more and more of this property becomes undevelopable.

Ron Ewart stated it was several hundred feet from Morrell Creek to the edge of the bench.

There were no further comments.

Commissioner Evans moved that the Board of County Commissioners approve the variance request to vary from Article 3-2(3) of the Missoula County Subdivision Regulations requiring that Vista Court have a paved width of 24 feet; and approve the variance request to vary from Article 3-2(1)(I) of the Missoula County Subdivision Regulations requiring that the private driveway for Lot 13 have a right-of-way or easement width of 27 feet, both based on the findings of fact set forth in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approved Montana Vista Phase II Summary Subdivision, based on the findings of fact and subject to the conditions as set forth in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Montana Vista Phase II Summary Subdivision Conditions of Approval:

1. Grading, drainage and erosion control plans, including construction of grassy swales and calculations for a 5-year frequency storm, shall be reviewed and approved by the County Surveyor prior to final plat approval. *Subdivision Regulations Articles 3-4, 4-1(12) and County Surveyor recommendation.*
2. Signage approved by the County Surveyor, which prohibits on-street parking, shall be placed adjacent to the cul-de-sac road serving this subdivision. *Subdivision Regulations Article 3-2, OPG and County Surveyor recommendation.*
3. The applicant shall rename the cul-de-sac road serving this subdivision and install street signs and have addresses assigned to each lot. The road name and street signs shall be reviewed and approved by the County Surveyor. After the County Surveyor assigns addresses the developer shall provide the addresses to the Seeley Lake Rural Fire Department. *Subdivision Regulations Article 3-2, County Surveyor and Seeley Lake Rural Fire District recommendation.*
4. An easement width of twenty feet shall be established for the private driveway providing access to Lot 13. *Subdivision Regulations Article 3-2(3)(C).*
5. Plans for driveways and turnarounds and for fire hydrant placement shall be reviewed and approved by the Seeley Lake Rural Fire District, prior to final plat approval. *Subdivision Regulations Article 3-7(2) and Seeley Lake Rural Fire District recommendation.*
6. The Covenants shall include a provision that Sections #14 and #16, concerning fire protection and the area of riparian resource, shall not be amended without prior governing body approval. *Subdivision Regulations Article 3-13.*
7. The developer shall prepare a Revegetation Plan for Disturbed Sites and a Noxious Weed Management Plan to be approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*

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

THURSDAY, JANUARY 20, 2000

The Board of County Commissioners met in regular session; a quorum of members was present in the forenoon. Commissioner Evans was out of the office all afternoon. Commissioner Carey was in Helena January 20th and 21st attending MACo Meetings and a Statewide Growth Summit.

ADMINISTRATIVE MEETING

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

Agreement – The Commissioners signed an Agreement between the Missoula County Road Department and Green Diamond Construction Company for widening/walkway improvements for North Avenue, shoulder widening on south side from Humble Road west to MaClay Bridge; South Avenue shoulder widening on south side from Humble Road to 15 feet east of Woodlawn Road, separated from 150 feet east of Woodlawn Road to Clements Road; Humble Road shoulder widening east side South Avenue to North Avenue. The term shall be 90 days after the date when the Contract Time commences to run as provided in paragraph 2.3 of the General Conditions. The document was returned to Doreen Culver, Bidding Office, for further handling.

Collective Bargaining Agreement – The Commissioners signed a Collective Bargaining Agreement with The United Food and Commercial Workers Union Local 4 for the purpose of promoting and continuing understanding between the two parties to provide for equitable and peaceful adjustment of differences which may arise, and to establish mutually agreed upon conditions of employment. The term of the Agreement will be July 1, 1999 through June 30, 2001. The document was returned to Steve Johnson, Director of Personnel, for further handling.

Contract for Services – The Commissioners signed a Contract for Services with Jason Roan, DDS of Helena, Montana, to provide weekly dental care to inmates confined at the Missoula Detention Center in accordance with the Montana Department of Corrections dental procedures and protocols. The term will be January 1, 2000 through June 30, 2001. The County may, at its discretion and according to the terms of the existing Contract, renew this Contract for a period not to exceed a total of five additional years. Fees for services will be according to the attached schedule.

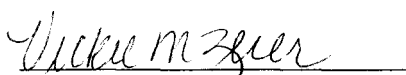
Resolutions – The Commissioners signed Resolution No. 2000-009 designating a highway approximately 13.268 miles in length in Missoula County as Secondary Route No. 263 and Resolution No. 2000-010 designating a highway approximately 11.397 miles in length in Missoula County as Secondary Route No. 533, agreeing to the following:

1. Review and approve plans and specifications for the Mullan Road Project and the Pattee Canyon Project, respectively,
2. Continue its usual maintenance operations of this highway, at County expense, of this highway except for any maintenance operations that the Department requires of its contractor under their contract,
3. Protect, defend and indemnify and hold harmless the State for any claim, damage, loss or cause of action arising from, due to or allegedly due to negligence of the County or its employees,
4. Upon notification by the Montana Department of Transportation, the County shall maintain the highway as constructed, including all traffic control devices; remove or cause to be removed or modified, any existing or future encroachments as may be directed by the Montana Department of Transportation; and administer the access, and the legal use of the constructed sections to the satisfaction of the Montana Department of Transportation,
5. Regulate utility occupancy on the right-of-way of this highway in conformance with occupancy regulations that comply with Administrative Rules of Montana 18.7.201 through 18.7.241.

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

FRIDAY, JANUARY 21, 2000

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


Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chairman
Board of County Commissioners

MONDAY, JANUARY 24, 2000

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

Claims List -- Commissioners Carey and Evans signed the Claims List, dated January 21, 2000, batch numbers 445 and 449, with a grand total of \$3,523.76. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated January 20, 2000, with a grand total of \$8,812.18. The Claims List was returned to the Accounting Department.

Contract – Chairman Carey signed a Contract between the Missoula City-County Health Department, Health Services Division, and Healthy Mothers, Healthy Babies The Montana Coalition of Helena, Montana for the purpose of providing and coordinating the services outlined in the goals and objectives of the community plan submitted by HMHB and approved by the Robert Wood Johnson Foundation. The term will be July 1, 1999 through December 31, 2001. The grant-funded amount shall be \$50,000 per year. The document was returned to the Health Department for further handling.

Resolution – The Commissioners signed Resolution No. 2000-011 to zone unzoned property and rezone property from “C-RR1 Residential,” “C-RR2 Residential,” and “C-A3 Residential” to “Miller Creek View Addition Planned Unit Development.” The Property is described as portions of Sections 12 and 13, T 12 N, R 20 W, PMM, Missoula, Montana.

TUESDAY, JANUARY 25, 2000

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, Commissioner Kennedy accompanied County Surveyor, Horace Brown, on a site inspection for the request to vacate a portion of the Clearwater Shortline Railroad Right-of-Way along Highway 12 west of Lolo.

Claims List -- Commissioners Carey and Evans signed the Claims List, dated January 25, 2000, batch numbers 446, 448, 450, 451 and 452, with a grand total of \$258,960.58. The Claims List was returned to the Accounting Department.

Claims List -- Commissioners Carey and Evans signed the Claims List, dated January 24, 2000, batch number 447, with a grand total of \$4,952.11. The Claims List was returned to the Accounting Department.

Claims List -- Commissioners Carey and Evans signed the Claims List, dated January 25, 2000, batch number 455, with a grand total of \$20,000. The Claims List was returned to the Accounting Department.

Indemnity Bond -- Chair Carey examined, approved, and ordered filed an Indemnity Bond naming Target Stores as principal for Warrant #11802 issued September 8, 1999 on the Missoula County General Fund in the amount of \$163.70 now unable to be found.

Indemnity Bond -- Chair Carey examined, approved, and ordered filed an Indemnity Bond naming Marleone Bremer as principal for Warrant #258666 issued December 31, 1999 on the Missoula County Payroll Fund in the amount of \$130.94 now unable to be found.

ADMINISTRATIVE MEETING

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

Memorandum of Agreement -- The Commissioners signed a Memorandum of Agreement with The Refugee Assistance Corporation in order for them to participate in the Missoula County Rural Domestic Violence Enforcement Grant Program, using all funds to provide services to domestic violence victims in accordance with the Violence Against Women Grant Office and adhering to the reporting and evaluation requirements set forth by the Agreement's administrative officer. The term shall be January 1, 200 through June 30, 2000. The total amount will be \$3,350.00.

Professional Service Contracts -- The Commissioners signed four Professional Service Contracts:

1. With Missoula Aids Council to perform HIV prevention work that has been defined as high priority by a community planning process, and authorized by MDPHHS funding. The term will be February 1, 2000 through December 31, 2000. The total amount shall not exceed \$28,070.00.
2. With HIV/AIDS Education and Prevention Council of Ravalli County to perform HIV prevention work that has been defined as high priority by a community planning process, and authorized by MDPHHS funding. The term will be February 1, 2000 through December 31, 2000. The total amount shall not exceed \$4,000.00. The document was returned to the Health Department for further handling.
3. With Mataios Productions, performances designed to encourage and enable HIV risk-reducing behaviors. The term will be February 1, 2000 through December 31, 2000. The amount shall not exceed \$1,600.00. The document was returned to the Health Department for further handling.
4. With Land and Water Consulting, Inc. to provide information for the Right-to-Know Program. The term will be February 1, 2000 through December 31, 2000. The total amount shall not exceed 100% of fees collected.

Resolution - The Commissioners signed Resolution No. 2000-012 to accept HDR Engineering's Plan to upgrade and maintain the Lolo Wastewater Treatment Plant.

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

WEDNESDAY, JANUARY 26, 2000

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

PUBLIC MEETING -- January 26, 2000

The Public Meeting was called to order at 1:35 p.m. by Chairman Bill Carey. Also present were Commissioner Barbara Evans, Commissioner Michael Kennedy, County Surveyor Horace Brown, County Clerk & Recorder/Treasurer Vickie Zeier, Deputy County Attorney Colleen Dowdall and Chief Civil Attorney Michael Sehestedt.

Public Comment

None

Routine Administrative Actions

Commissioner Kennedy moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$296,248.63. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Hearing: Straight Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 2A-1, COS 4716, Section 28, T15N, R22W.

Jim and Alice Straight have submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 9 acres in size located near the Nine Mile House off Highway 10 West between the Clark Fork River and the highway. The Straights propose to create an approximately 3 acre parcel for transfer to Alice Straight's son, Mark Iverson, while retaining a 6 acre remainder.

The history of the parcel is as follows: The original 10.96 acre parcel was created by a retracement survey in 1984. An adjoining parcel was created on that same survey by use of the agricultural covenant, creating a 2.36 acre parcel. In 1986, the boundary between these parcels was relocated which resulted in the creation of two parcels, each a little in excess of 6 acres. Two subsequent boundary relocations have resulted in this 9 acre parcel.

According to the records kept by the Missoula County Surveyor, the applicant has used the boundary relocation exemptions on this property and the occasional sale on parcels located elsewhere in the County.

Chairman Carey opened the public hearing.

Dick Ainsworth, Professional Consultants Incorporated, representing the Straights, was present, as was Alice Straight. He stated Mrs. Straight's son and family are currently living in the basement of the Straight's house. They would like to convey to the son the parcel shown on the request so he can have his own home.

Alice Straight was present and came forward to answer any questions the Commissioners might have.

Chairman Carey explained that due to the nature of a Family Transfer, the Commissioners needed to verify if she really intended to transfer the land to a family member and that her request was not an attempt to evade Subdivision Review.

Alice Straight stated it was not an attempt to evade review, she really intended to give this land to her son.

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

Commissioner Evans moved that the Board of County Commissioners approve the request by Jim and Alice Straight to create a new parcel by used of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Hearing: Copenhaver Family Transfer

Chairman Carey opened the public hearing.

Colleen Dowdall, Office of Planning and Grants, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described in Book 153 Micro, Page 760, Less COS 2663, Section 34, T17N, R15W.

William L. and Ann E. Copenhaver have submitted a request to create two parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is 18.77 acres in size located near Seeley Lake off Hemlock Drive. The Copenhavers propose to create two one-acre parcels for transfer to their daughters, Cheryl Schatz and Billie Dee Hinrichs, while retaining a remainder parcel of approximately 16 acres.

The history of the parcel is as follows: The original parcel was created by a transfer in a deed of distribution in 1978. The Copenhavers were deeded the property in 1980. In 1981, they created from the original parcel, a 4.99 acre parcel through the use of the occasional sale exemption from subdivision review. They still own that parcel and operate a mini-storage business in that location. The 18.77 acre remainder was not surveyed or filed of record.

According to the records kept by the Missoula County Surveyor, the applicant has used the boundary relocation exemptions to the Subdivision and Platting act on unrelated property.

Dick Ainsworth, Professional Consultants Incorporated, was present representing the Copenhavers. He stated the Copenhavers want to convey a one acre parcel to each of their adult daughters. The southerly parcel has an existing summer house that one daughter has used. They would like to convey the parcel with the house on it to her. They wish to give the other daughter a similar parcel north of that and keep the remainder parcel. The Copenhavers live off Hemlock Drive in the Clark Addition adjacent to other property they own. He stated the Copenhavers were not present today, they did not come in from Seeley Lake. He would try to answer any questions the Commissioners might have.

Commissioner Kennedy asked Dick Ainsworth to describe the easement through the property.

Dick Ainsworth stated the Copenhavers were the grantees of that easement. There is not access from Hemlock Drive to their property. When the mini storage was built, the easement was reserved to gain access to the rest of their property.

Commissioner Kennedy stated one of the purposes of Subdivision Review was to provide reasonable access. It seemed reasonable that Hemlock Drive should have provided access, however it dead-ends at their property line. He asked if the Copenhavers would object to an easement across the created parcels should it ever be changed in the future.

Dick Ainsworth stated he did not know the answer to that question. Ken Jenkins of their office has been working with the Copenhavers, however, since he was attending the meeting today for the Straights, Ken Jenkins had asked him to handle this transfer as well.

Commissioner Kennedy stated he was not interested in imposing any kind of condition, he just wanted to know what the interest in the property was.

Colleen Dowdall stated there was a time previously during Subdivision Review when the County did not want connections, as subdivision roads would not be used to serve neighboring subdivisions, under the theory that people who buy there are not buying into a through street, but a dead-end street. The dead-end of Hemlock Drive could have been imposed for that reason.

Chairman Carey asked Dick Ainsworth if this was indeed a family transfer and not an attempt to evade Subdivision Review?

Dick Ainsworth stated that was his understanding of the Copenhavers request, it was a legitimate transfer.

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

Commissioner Evans moved that the Board of County Commissioners approve the request by William L. and Ann E. Copenhaver to create two new parcels by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Hearing: Annexation to Frenchtown Rural Fire District (Petty Creek Area)

Chairman Carey opened the public hearing.

Michael Sehestedt, Chief Civil Attorney, presented a review the staff report.

A petition has been received by the Clerk & Recorder's Office to annex four parcels of land, located in Missoula County, into the Frenchtown Rural Fire District.

The petition has been checked and verified. It contains signatures of more than 50% of owners of the privately owned land in the area to be annexed and a majority of taxpaying freeholders within the area described, thereby meeting the requirements of 7-33-2125 MCA for annexation of adjacent territory.

The area to be annexed is described as follows: "Four parcels of land located in the Petty Creek area and more particularly described as follows: Tract 21 of Certificate of Survey No. 1914 located in the SE 1/4 of Section 35, Township 14 North, Range 23 West and the NE 1/4 of Section 2, Township 13 North, Range 23 West; Tract 24 of Certificate of Survey No. 1914 located in the NE 1/4 of Section 2, Township 13 North, Range 23 West; Parcel 20A-1 of Certificate of Survey No. 2666 located in the SE 1/4 of Section 27, Township 14 North, Range 23 West; and the E 1/2 of the NW 1/4 of the NW 1/4 of Section 28, Township 14 North, Range 23 West, all located in Missoula County, Montana."

Commissioner Kennedy stated he was familiar with the situation in Petty Creek. The fire district had a discontinuous boundary up there and he felt this annexation cleaned up and made contiguous some of those areas. Fire service was being provided to those not included in the district and this petition served to resolve that issue.

Michael Sehestedt stated there is a problem with properties outside an established fire district. It creates an issue of then trying to collect the cost of services back from the residents.

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

Commissioner Evans moved that the Board of County Commissioners approve the petition to annex four parcels of land, located in Missoula County, into the Frenchtown Rural Fire District, described as "Four parcels of land located in the Petty Creek area and more particularly described as follows: Tract 21 of Certificate of Survey No. 1914 located in the SE 1/4 of Section 35, Township 14 North, Range 23 West and the NE 1/4 of Section 2, Township 13 North, Range 23 West; Tract 24 of Certificate of Survey No. 1914 located in the NE 1/4 of Section 2, Township 13 North, Range 23 West; Parcel 20A-1 of Certificate of Survey No. 2666 located in the SE 1/4 of Section 27, Township 14 North, Range 23 West; and the E 1/2 of the NW 1/4 of the NW 1/4 of Section 28, Township 14 North, Range 23 West, all located in Missoula County, Montana." Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Hearing: Annexation to Seeley Lake Rural Fire District (Fly Inn Subdivision)

Chairman Carey opened the public hearing.

Michael Sehestedt, Chief Civil Deputy Attorney, presented a review of the staff report.

A petition has been received by the Clerk & Recorder's Office to annex a parcel of land, located in Powell County, into the Seeley Lake Rural Fire District.

The area to be annexed is described as follows: "The Fly Inn Subdivision at Seeley Lake located in the SE 1/4 of Section 36, Township 17 North, Range 15 West, Powell County, Montana."

The 8.0 acre property proposed for annexation into the Seeley Lake Fire District is located adjacent to the Seeley Lake Airport, in Powell County, but bordering Missoula County. A land exchange is being conducted with the Montana Department of Natural Resources and Conservation (DNRC). This involves trading six of the seven platted Fly Inn lots, totaling six acres, for eight acres of unplatted state land adjacent to this subdivision, but in Powell County. One of the conditions of approval of the Fly Inn at Seeley Lake Subdivision is to "provide proof of legal transfer of the fire protection responsibility at a minimum, for the area covered by this subdivision." The nearest rural fire department in Powell County is at Ovando, however, the Seeley Lake Fire Department is about two miles away. The Seeley Lake Fire

District felt that for tax purposes, the property should be annexed into their district. The Ovando Fire Department, Powell County Commissioners and the DNRC are also in favor of the annexation.

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

Commissioner Kennedy stated the State of Montana is exchanging the existing subdivision for property in Powell County.

Michael Sehestedt stated that was correct.

Commissioner Kennedy asked what the tax implications of that exchange were?

Michael Sehestedt stated the in-state ownership was exempt from taxation. However, if the property is leased and a house is built, the improvements are subject to taxation, even though they are on state owned land, and taxed as residential property.

Commissioner Evans moved that the Board of County Commissioners approve the petition to annex a parcel of land, located in Powell County, into the Seeley Lake Rural Fire District, described as "The Fly Inn Subdivision at Seeley Lake located in the SE 1/4 of Section 36, Township 17 North, Range 15 West, Powell County, Montana." Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Hearing: Request to Vacate Portion of Old Hayes Creek Road (Blue Mountain Area)

Chairman Carey opened the public hearing.

Horace Brown, County Surveyor, presented the staff report.

This is a petition to abandon "A portion of Old Hayes Creek Road from the East Section line of Section 9, westerly through the NE 1/4 of the NE 1/4 of Section 9, Township 12 North, Range 20 West, Missoula County, Montana."

The reasons for the request are as follows: 1) The road is not needed.

The following landowners have been notified: Christopher Cronyn, Andy Kulla.

A letter has been received from Deborah L.R. Austin, Forest Supervisor, Lolo National Forest, regarding this abandonment. The letter is as follows:

"The purpose of this letter is to document the Forest Service position on the petition for abandonment of "A portion of Old Hayes Creek Road from the East Section line of Section 9, westerly through the NE 1/4 of the NE 1/4 of Section 9, T12N, R20W, Missoula County, Montana." A public hearing has been scheduled on this petition for 1/26/00 at 1:30 p.m.

The Forest Service wishes to maintain the present level of administrative and public access through this tract. With this in mind, we request that the County not abandon this road until the Forest Service has been granted an easement for Forest Service administrative use and non-motorized public travel. It is not our intention to advertise or develop a trailhead for this public access. It is my intention to protect the access currently enjoyed by neighborhood residents, provide for Forest Service administrative needs and recognize the concerns of the landowner about motorized public access.

Feel free to contact Bob Kaufman at 329-3835 if you have any questions."

Horace Brown stated this road is shown in Road Plat Book 1, Page 116. It is also shown on an October, 1912 quadrangle which was reprinted in 1948. This road accesses the Blue Mountain Recreation Area. There is also a copy of the map of the 1939 Road Book showing that Hayes Creek Road was maintained during that time, for the full length in Township 12 North, Range 20 West. He felt this is a public access to Forest Service land and he would suggest it not be vacated.

Wally Congdon stated the owners of the property were presently not in Missoula. Susan Rangitsch was unable to get back to Missoula and asked him to represent her today. He presented a map of the site. The petition involves vacating a portion of the road that crosses a 40 acre parcel that is owned by the Cronyns, which would effectively vacate the road across the remainder of Section 9, part of Section 8 and part of Section 5, because the road would not be connected. At this point in time the road does not exist on the ground. There is a dirt track for a portion of the distance, but the remainder is not used or present for vehicular use. The reason for the petition is that the road crosses, in theory, their property somewhere, although where the existing administrative Forest Service road crosses their ground is not in the same location. The Cronyns wish to vacate this road as another access exists within 1,000 feet that the Forest Service uses. This could be the public access for pedestrians, horses, bicycles, etc. Mr. Cronyn wrote a letter to the Forest Service when this process began and suggested giving the Forest Service administrative access over the old road, entailing them to spray weeds, log, do maintenance, fight forest fires, etc. This will in no way limit Forest Service access. The concern was primarily having as much of the public as could use the parcel of property for access onto Forest ground, the issue of liability associated with that, etc., because nobody maintains it from where it abuts the old highway all the way through to Section 5. He assumed it goes through yards and platted subdivision but the road does not actually exist. He thought the Commissioners could have the hearing today and sort out with the Forest Service what they wanted to maintain as administrative access and give the government an easement separately that incorporates those terms so that is against the title of the property at a known, surveyed location so there is a legitimate easement.

Commissioner Kennedy stated immediately south of the road to be vacated is another road. What is the status of that road?

Wally Congdon stated that is what the Cronyns believe is a private road utilized administratively by the Forest Service. The Forest Service has traditionally requested permission to use that road. That is the road that is not maintained a great

distance that the Forest Service uses to get access to its property. He believed the assumption could be made that one of the two roads is in the wrong place.

Commissioner Kennedy stated the road they wanted to vacate was a public access even though it may not exist physically, it exists from a right of way standpoint. Should it be vacated, how would the petitioner feel about granting an easement on that existing private road to substitute. They would eliminate a public access through the northerly portion of their property but would provide easement over an existing traveled right of way.

Wally Congdon stated the Cronyns intention was to give the Forest Service administrative access over the existing road. The thought was to give the Forest Service administrative access and the public has a separate access just to the south. The Cronyns worry was not to have a second major public access through the property because of maintenance, liability, etc.

Horace Brown asked how far south the road was.

Wally Congdon stated the road was only about 700 to 800 feet south, into the existing trail system that is maintained by the Forest Service.

Horace Brown asked if it would be a full easement.

Wally Congdon stated it is a full easement and was dedicated on the Certificate of Survey. It is a 10 foot easement intended for pedestrian and horse travel.

Commissioner Carey stated the letter from Deborah Austin asked that the road not be vacated until the Forest Service has a chance to work things out with the landowners.

Wally Congdon stated that Mr. Kulla of the Forest Service indicated they wanted administrative access of some type. They have not sorted out what that is yet. He requested that testimony be taken today and leave the hearing open so the proposal from the Forest Service can be presented when it is received.

Susan Reneau stated she was President of the Hayes Creek Homeowners Association and also an avid hiker in this area. This road is an easement that the residents would like to retain. The Homeowners Association agrees with the Forest Service.

Pete Odegard stated he lives in the Hayes Creek area. The area on the south side of the creek is not a trail, however, people use it. It is not part of the trail system and not maintained by the Forest Service. It is not open for motorized use. The section that Mr. Cronyn would like vacated is used by a few hundred people a year as it ties into the trail system.

Horace Brown stated the site inspection would clear up a lot of the questions. There was still a 60 foot easement there whether the road existed or not. It was maintained in 1939 by the County.

Commissioner Kennedy stated that people are using the existing traveled way which Mr. Congdon asserts is a private road. His question to counsel was is there any public use that is legal public use on that private road

Michael Sehestedt stated he felt the site inspection will reveal that the public road is probably what has been probably been referred to as the private road. The best documentation of an uncertain improvement is the physical location of the road. A site examination will reveal the existing public road.

Pete Odegard stated there were some old homesteads in the area and the County road would probably be the one going to them.

Chairman Carey stated he would continue the hearing on this matter. A site inspection will be scheduled and the matter will come before the Board again on Wednesday, February 23, 2000 to allow time for communication with the Forest Service and the homeowner.

Horace Brown stated he would have the survey crew use GPS to locate where the original road was.

Commissioner Evans stated she would not take action on this matter until there is written agreement with the Forest Service.

Hearing: Rock Creek Airpark (11 lot Subdivision) – 22 Miles East of Missoula

Chairman Carey: I'll now open the hearing for the Rock Creek Airpark, 11 lot subdivision, 22 miles east of Missoula. Do we have a staff report?

Allison Handler: This is a request by Gary Lundberg, represented by Eli & Associates, Ron Ewart is here from Eli & Associates, to create an 11 lot subdivision on a 24.34 acre parcel. It's 22 miles east of Missoula, south of Interstate 90 at the Rock Creek exit. It's north of Downwind Drive, north of the MRL railroad tracks, north of the Clark Fork River. The property includes an existing airstrip one-half mile in length. It's been used since 1958 as a private airstrip. Two earlier proposals for this property were considered by the Planning Board and the Board of County Commissioners in 1997. The first proposal was for a 28 lot subdivision. That was heard in January, 1997. OPG staff recommended approval of the request. Planning Board recommended denial for the following reasons. They were concerned about lack of compliance with the Comprehensive Plan. They were concerned about airport safety. They were concerned about the mixing of airport uses with residential uses. They had questions about the rural, historic and scenic character of the area and the density and intensity of the proposed use. The County Commissioners wanted more time and more information to assess the proposal. In May of the same year, the developer came back before the Planning Board with a revised proposal for a 14 lot subdivision and rezoning to create the Rock Creek Special Zoning District. OPG again recommended approval. Planning Board again recommended denial and some of the reasons were the same. Their questions about lack of compliance with the Comprehensive Plan. They had concerns about sewage constraints due to high ground water and questions about public safety. In July 1997, the Board of County Commissioners denied approval

of that request. The new request comes to us with 11 lots on the same parcel of land. Planning Board heard this request on January 4, 2000, and recommended approval with a 9 to 0 vote. Staff has recommended approval as well with 9 conditions which I'll summarize a little bit later. The property is 250 feet north of the Clark Fork River. Between the property and the river is the MRL railroad berm. South of that berm is official FEMA mapped floodplain. This property lies within one of those many locations on the Upper Clark Fork River where the railroad cut off a large section of riverbed meanders. The Rock Creek Drainage is about 3/4 of a mile downstream. Rock Creek and the Clark Fork River are identified by the Inventory for Conservation Resources as providing important wildlife habitat including fisheries. Several utility companies have existing utility lines that cross this property. Those include Montana Power Company, Missoula Electric Cooperative, Blackfoot Telephone and Yellowstone Pipeline. All those utility lines are located in a proposed easement shown on the plat. This request includes one variance request and that's to vary from the requirement to provide pedestrian walkways and staff recommends approval of that request. In terms of the findings of fact that staff considered when making our recommendation, we looked first at zoning and Comprehensive Plan compliance. The property is unzoned. The 1975 Missoula County Comp Plan recommends Open and Resource land use with a residential density of 1 dwelling per 40 acres. This is the designation that is intended to protect areas of important natural resource production and extraction and also to reserve land for the future where development during the time frame of the plan is premature or costly. In our initial Comp Plan analysis, and this is taking into account trying to be consistent with our earlier Comp Plan analyses back in 1997, we examined the Comp Plan in terms of that intention to preserve land until such time as development would not be considered premature or costly and we were able to find substantial Comprehensive Plan compliance. However, we received new information yesterday indicating that the property lies between 2 and 4 feet below the 100 year base flood elevations of the adjacent floodplain. The 1 per 40 Comp Plan designation is also intended to protect areas of natural hazards, including floodways or flood prone areas and so if we were to do a new Comprehensive Plan analysis to reanalyze this, it may result in a different determination with this new information. I'll speak a little bit more about that when we get to the natural environment and public health and safety sections and also Brian Maiorano is here to answer questions about that as well. The property is located at the I-90 interchange at Rock Creek. It's 5 miles from Clinton. It includes an existing air field. This is one of the interchanges on I-90 where there's not an activity circle. Other interchanges, there are activity circles drawn around other interchanges between this location and Missoula. The property is about 500 feet from Rock Creek Lodge. There are other developments in the area, these include Elkhorn Guest Ranch, Fisherman's Mercantile, the Sportsman Lodge. These are all commercial enterprises and so just in terms of how we were able to find Comp Plan compliance in our initial analysis, we looked at this area as an area where this sort of development would be consistent with other types of development happening in the area. Most parcels in the area are about 20 acres in size, some are as small as 2 acres, a couple of very large, one is 160, one is 200 acres. As I noted before, the property includes an existing airstrip. It's been in use for about 40 years. Missoula County really doesn't have the expertise on our staff to review the subdivision as an airport, per se, and so staff recommended that the airstrip be removed from the plat and not be included as part of the subdivision and that's shown on the plat in front for the audience to see. It's that yellow part that's been removed. Lots in this subdivision range in size from just under 1 acre to approximately 7.7 acres. Total density as proposed is 1 unit per 2.12 acres. When the airstrip is removed, the density becomes 1 unit per 1.45 acres. So, in terms of the Comp Plan, the proposal does not meet the density recommendations of the 1 per 40. It does meet the Comp Plan in terms of that idea of development not happening until such time as it is not premature, but given the new information, a new analysis might result in a different determination. In terms of local services, this is criteria on number 2, under Primary Criteria for Compliance, this property is served by Downwind Drive. This is a State maintained road, it's part of Highway 10. The Transportation Department's maintenance responsibility covers just about 1/5 of a mile of Downwind Drive. It does not cover the majority of this subdivision and so as one of our conditions of approval, we have recommended a road maintenance agreement be established between the lot owners in this subdivision in order to ensure that there is adequate access for emergency vehicles. There are no sidewalks or pedestrian walkways in the vicinity. As I said earlier, the applicant has asked for a variance from the requirement to provide pedestrian pathways and we recommended approval of that. Condition 2 calls for an RSID waiver that includes pedestrian walkways and also includes connection to public water. In terms of parks and recreation, staff recommends elimination of the airstrip from the subdivision and the airstrip was a large portion of what the proposal was calling common area for this subdivision. However, the applicant is able to meet their requirement for parkland dedication through a secondary proposal of cash in lieu of parkland, that's in their application. Criteria 3 and 4 address the effects on the natural environment and wildlife and wildlife habitat. The subject property is not located in the floodplain areas as mapped by FEMA. According to FEMA maps, there's 100 year floodplain to the south of the MRL right of way. The Clark Fork River and Rock Creek, as I said earlier, contain important wildlife habitat. The Inventory of Conservation Resources classifies these as, respectively, a Class I fishery for Rock Creek and Class II fishery for the Clark Fork River. We did receive some comments from Fish, Wildlife and Parks regarding wildlife and the need to minimize human-wildlife conflicts and also some comments from the weed district regarding the presence of weeds. We have conditions to address those. Specifically, in terms of that floodplain issue, I just want to get back to that, and I may, Brian, if it's okay with you, I may just hand it over to you for just a minute. We did speak with Montana Rail Link and verified from them that their railroad berm is not built as a flood control structure. The property was flown to determine the elevations of the property yesterday. The applicant's representative determined that the property lies between 2 and 4 feet below base flood elevations, 100 year base flood elevations, and so there is some question about whether the area may be flood prone and I'm going to let Brian, if it's okay with you, talk more in detail about that.

Brian Maiorano: The flooding concerns that we have are based on a number of things, as Allison pointed out. The first thing about this property is that it is old river bottom, it's real evident when you look at the soil types, you can look at the topography out there. Aerial photos clearly show old meanders gone on both sides of the Interstate. When, probably in the late 1800s, when the railroad came through, constrained that part of river by pushing it to the south side of the valley there. However, that certainly didn't raise up the ground where this proposed subdivision is. The other thing that clued us in that there was a potential flooding problem, besides just looking at the ground floods in 1997, there's ground water that surfaced on the property in some of the lower areas. During 1997 flood, it was approximately a 25 year flood event; typical floodplain management is based on a 100 year flood. A 100 year flood in that spot would be roughly a few feet higher than the 25 year flood that we had in 1997. 1997 was very minor in terms of flood events. In the past 50 years there have been, I think, four other events that were larger than the flood that we had in 1997. As Allison pointed out, this is not designated on the FEMA maps, the flood insurance rate maps, as being in a 100 year floodplain. The reason we believe that was done when FEMA made those maps is because the railroad berm separates the river from this property. The railroad berm is 15 or 20 feet above the height of the river at low water stage. The problem with that, the reason we believe the FEMA map is in error as we've found in a lot of other places in the County where those FEMA maps are wrong, is that the railroad bed was never designed to be a levy. It was designed as a railroad bed so it's not built to the same construction standards, the same engineering standards, as a levy would be and also as we know, as

we've seen all across the country, even levies that were built by the Corps of Engineers in the past 30 years or so, specifically to hold flood waters back, those levies fail. Montana Rail Link, who owns and maintains that rail bed, they are very uncomfortable with the prospect of houses behind that rail bed in the sense that it, they agree that it was not designed nor is it maintained to be a levy. They make no guarantees about its ability to hold back flood waters. While, obviously, they have a great interest in keeping the rail bed from being washed out, they don't feel obligated, nor do they want to be responsible for protecting homes that are protected by that rail bed and from homeowners who think that its serving as a levy. As Allison stated, during the agency review time, I had commented that it appeared to me that this property was below the 100 year flood elevation and had requested that the applicant develop or obtain those surveyed elevations to determine the height in relation to the flood elevation. What we found yesterday is a good bit of the property is 3 or 4 feet below the base flood elevation, which is substantially below and what I'd like to touch on briefly are the 3 different, I see 3 different scenarios in which water could come on to this property. The first one, and probably the most likely or the most common I should say, is that ground water could surface on the property. Because it's an old river bottom is the soils there are porous gravels and it's very easy for water, as it raises in height against the railroad bed, simply that the hydrostatic pressures of that forcing the ground water up on the other side of the railroad bed to try to equalize the height of that. During a 100 year flood, the level of the river is going to be 3 or 4 feet higher than the area of the proposed subdivision, whether or not ground will surface that height on the subdivision will depend mostly on the duration of that flood. If it was a real quick event, that it peaked within a day, it might not reach that height, but if it's sustained that height, for a few days, a week or so, it's highly likely it would reach the same height as the river. There was some discussion of whether or not once we increased all that area for flood storage if in fact the river level would drop. I don't believe that's the case simply because the water behind, on the north side of the railroad bed, would be either stagnant or moving very slowly so it's not going to be providing a whole lot of volume of flood storage compared to the amount of water that's coming down the Clark Fork at that time. I think the Clark Fork at that point is probably around 20,000 cfs. But whatever that number is, it's a significant volume in relation to the amount of flood storage there. A second way that water could get onto that property is that there are several pipes or culverts through the bed of the railroad and these were put there intentionally, obviously, to allow water from the north, from the hillsides, to come down, drain into the river so that it does not back up behind the railroad bed. MRL tells me that there is one about 1/2 mile downstream of the Rock Creek bridge, I believe, I haven't investigated this on site, but I think it's where one of the old sloughs comes back in. That one likely would not have a danger to this property, but there is also one about 2 miles upstream of the property which I believe is an irrigation ditch which actually carries water from the river, again, I'm interpreting off of aerial photos, I just got this information the other day, I haven't been out there. But at any rate, what MRL has said is that it's very common at those spots during high water for water from the river to flow backwards, or to flow through the bed using those pipes to allow water onto adjacent ground. They also stated that it's real common during those times for nearby homeowners to want to go out and block those culverts to try to prevent themselves from getting flooding, which can, obviously, cause some other problems if we're backing up water from somewhere else. The third way that this property could see water would be actual breaching of the rail bed by the river, in other words, not standing water surfacing or slow moving water, but if the rail bed failed to hold back the river and the river was able to erode away that rail bed. I think the likelihood of that happening, I don't know what the probability of that is, but again, MRL says that they make no guarantees that that wouldn't happen and we also know that it has not been designed as a levy, it has not been designed to withstand those types of pressures. We do know that in 1908 upstream of the property, up where five miles, this is from the photograph, that that spot, or the railroad was breached by flood waters. The river in this spot is very similar to the river at that spot in terms of its configuration, its volume, and also the narrowness of the valley. Since that time, MRL states that they have reinforced spots of the rail bed with riprap, but also during a 100 year event, I think all bets are off there. Our flood study shows, for that area just upstream of the property, is there are a couple of constrictions where river velocities are about 12 feet per second, which is an incredible velocity, it's just amazing erosion potential. So, if water were to breach through there, through somewhere upstream, again, I don't know the likelihood that that could happen, but it is a possibility. It could certainly have the potential to cause a lot of damage on the subdivision if you had water 4 or 5 feet deep moving through there at a high velocity. In terms of potential hazards for mitigation that would need to be mitigated, obviously, protecting the structures against the height of flood waters and also the potential erosive forces of flowing water. I would recommend that there be emergency access provided during flood waters. Right now, it appears that there would be no access to the property. I'm concerned about what would happen with aviation fuel or other chemicals associated with the airport facility during a flood if those were to go into the water and also, just to point out that drinking wells that are submersed by flood waters, flood waters are typically very polluted simply from septic systems upstream fouling and being inundated or other spills of chemicals. And then, I'll point out, I know that the Board does not review septic tanks, but that is another issue that the Health Department will deal with in terms of addressing how whether or not drain fields could be approved in an area that would be potentially under 4 feet of water during a 100 year flood. If you have any questions.

Chairman Carey: Thank you, Brian. Do you have anything else, Allison?

Allison Handler: I do. I just want to kind of tag onto what Brian just said, and thank you very much for all that information. Originally, in our initial analysis, we had Condition 9 in our staff report in an attempt to address the ground water and floodplain issue. On Brian's recommendation, we recommended that elevation of the property be provided and those have been provided now, and that the lowest floor of the building be elevated at least 2 feet above base flood elevation. At this point, given the new information, I'm not certain whether that needs to be modified in some way to address that further. I can finish my staff report and we can discuss that if you'd like. Is that okay.

Colleen Dowdall: I would prefer that you not amend the staff report at this point and just, because it's information that was received subsequent to preparing the staff report, it's in the Commissioners ballpark at this point to decide whether they want to change that.

Allison Handler: Absolutely. Okay. Let me think, is there anything else that I need to mention to you. Just, very briefly, to reiterate what I stated earlier. Because we didn't review the airstrip for airport safety or for airport safety, Condition 6 calls for removing the airstrip from the subdivision and that there be a statement that holds the County harmless from liability associated with the airstrip. That concludes my staff report. We did receive several public comment letters, a couple of them are attached to the report. One I brought to you last Friday, one I brought to you yesterday and one I gave to you today, in case you hadn't already seen it, from Mr. Doty.

Chairman Carey: Thank you. Would anybody like to speak to this?

Ron Ewart: Thank you. My name is Ron Ewart with Eli & Associates. I'd like to, just quickly, broaden the discussion a little bit to talk about the concept and then talk briefly about the issue that seems to be taking center stage at this time. First of all, as Allison stated, the airstrip was constructed in 1958 by Montana Aeronautics, so for 40 years this has been an active airstrip. The property is owned by Gary Lundberg, who is here. Gary has been a private pilot for over 20 years. He lives in a small residence on the property within a hanger, so it's a combination of a home and a hanger. This proposal, then, would not involve a change in the use of the property. The lots will still be residential but they would be accessory to the airstrip as the use of the airstrip is the historic use of the property. The hanger/homes are expected to be rather small in size. They would need to be large enough to contain a small light aircraft and to have some living quarters, much like Mr. Lundberg's home. There will be an architectural review committee that must first approve plans for any structure. There will be protective covenants and restrictions to be followed with the property and a property owner association created. These documents are very comprehensive and are designed to promote safety, aesthetics and to insure that the property remains as proposed, which is residential as accessory to hanger use, with very limited commercial. The documents also memorialize the liability insurance requirement of the association or other leaseholder of the airstrip and waiver of liability for Missoula County. Covenants can be an effective tool for maintaining quality and desired elements of original plans, but covenants can be amended and normally are not enforceable, but only by the parties that are covered by them. However, the subdivision regulations do allow the governing body to require that the subdivider enter into a written agreement to provide for the enforcement of certain restrictions imposed by the governing body as a condition of plat approval. Some of the conditions of approval that are recommended by OPG have to do with non-reflective earth tone surfaces of the buildings, landscaping and certain elements to soften the visual effect from I-90. The covenants will contain these elements. The proposal is also to create a development agreement between the subdivider and the County. This development agreement will ensure that certain portions of the covenants for the subdivision, which involve prohibited and permitted uses, required setbacks, height limitation, landscaping requirements, access plans, maintenance of Downwind Drive, property maintenance, liability insurance requirements, indemnification of County liability, the fact that they may not be changed without prior consent of the governing body and that any violations may be enforced through legal channels. So I just want to bring that up to let you know that we do have a mechanism to make sure that certain elements of this proposal are kept in place. The property is located next to I-90, next to an overpass, next to Montana Rail Link, so it is somewhat separated from the rest of the Rock Creek valley. It's about 3/4 to 1 mile from the mouth of Rock Creek. The property is not within the FEMA designated floodplain. We have done high ground water testing, in the spring of 1997, I might add. We did soil profiles and percolation tests. The only standing water that has been known to occur on this property in the last several years is located in this far southwestern corner of the property. We did look at that on some air photos of the flood. I spoke with Dan Ekstrom and Dan has lived in this area, he used to own the property for many, many years, and that is the only location where he has seen standing water, is in that far southwestern location and in that area they had dug out some gravel to build Highway 10 many years ago. The conditions of approval do recommend that the covenants be amended to include a statement that the property is located in an area known to have high ground water and near the 100 year floodplain and that special construction may be required. We are agreeable with that and we wouldn't mind taking that a step further to inform the property owners, through a statement on the face of the plat, as well as in the covenants, deed restrictions and so on. We feel there could be a statement of a waiver of legal liability for Missoula County or other entities and I feel that there are some information that we still don't know about the situation regarding the flood prone area. We started this proposal about 3 years ago and during that entire time we basically worked off the information that we had and as of late, some new information is coming out but we did not know the base flood elevation on this property. We know what the FEMA map shows it to be within the FEMA designated floodplain. The recommended conditions of approval do recommend that each lot has a building site above the 100 year base flood elevation and we have stated before that we are in agreement with this conditions. The Planning Board did give its unanimous approval and we are in agreement with the conditions. We feel that the staff report does cover the bases rather well and we do feel that there could be some more additional study that needs to be done on this flood issue and that we would like to meet with staff and come up with language that would hold the, that would inform property owners of the potential of flooding even though we are outside of the floodplain, and language that would hold Missoula County harmless from any potentialities that might exist. Brian did bring up some mitigation strategies, such as how could we protect structures, provide emergency access, aviation fuel storage, things like that, and we feel that those are issues that we can address and we would like the opportunity to do that. In closing, I would like to say that we've spent a lot of time trying to make this a good project. We've come a long way with it and we would like to see this come to fruition and make it as good a project as possible and as safe a one as possible. Thank you.

Chairman Carey: Thank you, Ron. Further testimony?

Larry Martin: Good afternoon, my name is Larry Martin. I'm a neighbor of the property, some 500 feet to the south. I wrote you folks a rather extensive letter and I'm not going to belabor all those points, I know it's getting into the afternoon and you're tired, but if all of these other factors were mitigated that we talk about, we still have a lot of noise pollution. When the very few aircraft have been on the airpark over the past four years, I had them 250 feet over the top of my property as Dr. Sousa and Mrs. Sousa can attest to also, and the other neighbors can. Not to speak of the fact that you're talking about a .88 per acre density in an area that's very clearly 1 per 40. You're talking about a flood control problem that I addressed in the last meeting and brought pictures of standing water on the property. Yes, in the south end of the property it was flooded, the north end was not, but it's an airstrip, you know that it's relatively flat. And even the north end of the airstrip is only a couple or 3 feet above where that floodplain was. I'm astounded that the engineer could stand here and look you folks in the eye and say that they were not aware of the elevation of the property. I mean, that's his business. I was aware of it. I also am a director of the Rock Creek Protective Association, I'm not speaking on their behalf, but you do have a letter from Adam Mitchlovich, who did address this problem with the approval of the board. Rock Creek Protective Association is 240 members strong, most of those folks being residents, the others being parties interested in maintaining the wonderful rural nature of Rock Creek, which is the reason that we live there and invested a lot of money in our home. And at that time, by the way, I did address the Planning Staff with a 5 acre subdivision. They told me "no way," and in reliance upon that, I spent a lot of money building a home that I hope to live in the rest of my life there. I hope you folks will consider the inappropriate use even though this "airport" has a historical use. We don't argue at all with the emergency potentiality of that airport. From a safety standpoint, that's all it's good for. It doesn't comply, it doesn't have to comply with FAA regulations and if it did, it certainly wouldn't. There is a glide slope requirement on their part of 20 to 1. This airport, the way I calculate it, looks like it's more like 4 to 1, which is practically in a dive when you're coming in to land at that airport. I talked to every airport office and official that I could reach and none of them could address this because it didn't require their approval, but they all said, "We wouldn't land there." The Elkhorn, by the way, is 4 miles away. You know, you talk about commercial applications, there's the lodge and an RV park and a mercantile and those are slight and very compatible commercial uses. I appreciate Mr. Lundberg

wanting to maximize the value of his property but to do so at the expense of hundreds of other property owners is just too much to ask. Thank you for your time.

Chairman Carey: Thank you, Mr. Martin. Further comments?

Jan Sousa: Good afternoon. My name is Jan Sousa. My husband and I own the acreage most, the closest house to this planned subdivision. I think I misheard the planning staff that the average size of the lots in the area were 5 acres. We own just under 200. We share a driveway with Gordy Howe, who owns 140. We share that same driveway with the Martins, who own 25 acres and our closest neighbor to the west owns 160. The alfalfa field, which is just north of the landing strip, is owned by Dan Ekstrom, who owns the 160 to the north of the freeway. Gordy Howe, in your packet, owns a piece of property which is subdivided. That was done by the previous owner in an attempt to maximize his profit. He sold it just to Gordy Howe, who has no intentions of subdividing that. We have been there for 20 years. When we arrived, there was an old barn on the off ramp. We come down off the off ramp to the west and there's an elevated pasture where we raise horses, cows, chicken, an emu and children. And in that barn, it was kind of an old landmark, we filled it with hay because the use of that area as described by the Comprehensive Plan is agricultural and recreation use. The kids played in the barn and burned it down with the lights and we've reconstructed another barn, but because it was a landmark, the neighbors brought us a picture once, just a couple years before our moving there in 1980, and it's up on a, I guess what you can say is the river has washed away over the years a pretty steep bank and the barn, where the new barn is now, is up on a plateau higher than the railroad track berm, and we have water in this picture lapping up against that berm. We have also seen the standing water to the east of the off ramp as we drive over. If it were, I was interested again about the comment of the agreement of covenants and that we could put language in it that would ensure that the County wouldn't be responsible but if there were an accident and were to land on our property, maybe the pilot is responsible and maybe he has insurance, but we're still going to look to the County to say, "well, you knew that was an airstrip." Speaking of which, let me digress. The airstrip has been there for 40 years and no accidents. We've lived there for 20 and granted, I'm not there counting the planes, but I don't think it would be a stretch to say that I've seen 5 different planes on that airstrip, and, of course, none in the last 2 or 3 years because the aeronautical board quit maintaining it. Nobody has landed on that strip because it's in disrepair. Obviously, there's no, I mean, if we now increase that from none to 11 and the runway is shortened, it's a narrow canyon, how do we know that we're not going to increase the chance for accidents. The covenants, I think we've been around this before. The County doesn't have the where with all, either in person power or finances, to make sure that the covenants that people put on their property are maintained. I guess it's really hard for me to imagine that whatever, that, first of all, we're going to come up with 11 people who would dare to fly a plane and land it there. My husband has talked to multiple pilots who are aware of that and wouldn't consider landing a plane there. And then we're going to have covenants that somehow they're going to maintain without any resources to make sure that the County sees that those are observed. I won't go in, again, to the standing water, the septic, the problems of fuel getting into the Clark Fork. I better quit so you can have somebody else talk. I appreciate your willingness to review this and your consideration on behalf of the people of Rock Creek. Thank you.

Chairman Carey: Thank you, Mrs. Sousa. Additional testimony?

Jack Doty: My name's Jack Doty. I have property nine miles up Rock Creek Road. I submitted a letter but I did not see it in the brief here. I talked to Allison Handler yesterday, so I can make another copy of the letter. It's available, Bill? Thank you. I'm facing the tyranny of the parking meter out there so I just have two very brief comments. I'm a member of the Rock Creek Protection Association as well and have owned land there more than 12 years and a point that has not been raised is that this is the entrance to a prime scenic and tourist area as well as an area of preservation. This is the entrance and an entrance is important, as we know, to a city or to an area. The second point I have is that an elemental principal of zoning, in my opinion, is that the characteristics of an area or a neighborhood should be maintained and this is a rural area and this project would break those characteristics. So thank you very much.

Chairman Carey: Thank you, Jack. Additional testimony, please?

Keith Bomstad: I'm Keith Bomstad, Chief of the Clinton Rural Fire District. I came here not to be a pro or con but to make sure the County Commissioners understood that the way this is drawn up, we have basically no problems with it. Access is fine, we also thought of what if there was aviation fuel or whatever. That would be a very controllable item here. Obviously, if there was a flood that come down through there and washed out the railroad, it would take out the whole valley and I'm not putting down anything you've said. Then that would be out of our control. Also, in this general area I talked with Gary just before we come in here, it was an afterthought on my part, I apologize for not thinking about it and adding it to our comments. This is an area right on the interchange, right where we would need another substation for our fire district at one time, down the future. Obviously, we don't have the money to do it right now. But I pursued that thought with them and he had no problem with that, that he could possibly work in a spot, a piece of ground down there where we could put a satellite station. This would also help serve the area in there. Also, it would probably attract more volunteers in that area which we've had a very bad problem recruiting from. But if there was a satellite station there, obviously it could cover that area, even though we're five miles down the road. If you look at a Comprehensive Plan about fire protection that is every five miles, is ideally the way to do it. If there's any questions you had.

Chairman Carey: Not at the moment, we'll hear other testimony first, I think. Thank you. Additional testimony?

Commissioner Evans: Allison has a comment that she would like to add into the record.

Chairman Carey: Okay.

Allison Handler: Thanks, Barbara. I just wanted to respond, I think it was, maybe it was Mr. Martin, who had the comment about how we calculate density in terms of lot size and I just wanted to point out that when we analyze density we look at the overall acreage and calculate number of lots on that overall acreage instead of this lot is this small and it's in comparison to other lots that are this small; this lot is this small in comparison to the entire parcel. Thanks.

Colleen Dowdall: I just wanted to, added to, in response to Mrs. Sousa's comment, so that the Board could recall that Allison's report did include reference to the parcels that were 200 acres in size, and 160 acres in size. I think what she

said was there are parcels that are as small as five acres, but her reference also included the large parcels. In case you missed that, I didn't want you to think she was slipping it by us.

Chairman Carey: Thank you. Additional comments? Questions from the Commissioners?

Commissioner Evans: Not questions, but a comment. I would like to find a way to grant Mr. Lundberg the use of his property but there are a few things about which I am concerned. Flooding is the major one and I believe that the opportunity to provide mitigation for this concern is called for under state law and so I would certainly offer that alternative or that process to Mr. Lundberg and his representatives. I'd also like to point out that Allison is right, the amount of land required for compliance is determined on the entire size of the lot, not on just the little piece that the house might go on. It appears to me that if the 1 per 40 had been tightly, tightly adhered to, that there are people in the room that would not have their property as well. I would like to also remind folks that that land is not zoned. If you want to prevent the kinds of things you want to prevent, then I suggest you zone the land. You know, I find it really interesting that when the Testicle Festival is on and there are thousands and thousands of people down there getting drunk, nobody comes in here to complain and yet something that they want to do that isn't of the same nature, people are not happy with. So, I find that really interesting. I would move that we postpone any final decision on this to a time, whatever meets the requirements of the applicant and his representatives, to allow them time to submit a mitigation to our concerns. And I guess they'd have to tell us how much time they think they would need for that.

Chairman Carey: Can anyone speak to that?

Milt Datsopoulos: I'm Milt Datsopoulos. I'm an attorney, I've been consulting with Mr. Lundberg. Obviously, the issue involving flooding and the mitigation of that potential problem is very recent. We have not had an opportunity to address it. We've spoken about it this morning just briefly because it might require some professional analysis, I think if we could have up to 60 days, I would appreciate it. I'm sure we'll probably have some mitigation proposals prior to that time.

Chairman Carey: Thank you.

Commissioner Evans: The first Wednesday in March?

Chairman Carey: That doesn't give us 60 days.

Milt Datsopoulos: No, it would be the first Wednesday in May, wouldn't it?

Chairman Carey: February ... March ... April. Yeah.

Milt Datsopoulos: We're coming up on February next Monday.

Commissioner Evans: The first Wednesday in April.

Chairman Carey: That's agreeable to everybody? Does that work?

Milt Datsopoulos: Yes.

Colleen Dowdall: We will need to have a waiver in writing from the developer that they are giving us the additional time in which to make a decision.

Chairman Carey: That's a request coming from you folks. Okay.

Milt Datsopoulos: We will formally request that amount of time and in that request we will formally waive any time requirement that you have to make a decision prior to that.

Chairman Carey: For the record, do you think we ought to list, a least make a partial list, of some of our concerns?

Commissioner Evans: Probably would be helpful to them if they know what all things they need to provide to propose to mitigate.

Chairman Carey: Right, this wouldn't be an exhaustive or complete list of our concerns, but I think the major concerns we have, have to do with the floodplain issue. As you know, we have run afoul of official FEMA maps before. They're not reliable. So we're going to have to take a look at that. I think there's a great deal of concern also about the, whether or not this in fact complies with the Comprehensive Plan in a significant way. I, myself, am not resolved that it does. And perhaps, Allison, just so I'm clear, we're talking about a 24 acre parcel before the airstrip is removed. Correct? So after that, we're down to 1 unit per 1.45 acres instead of the 1 for 40 that the Comp Plan calls for?

Allison Handler: That's correct.

Chairman Carey: Okay, thank you. And, perhaps the Commissioners have other concerns they would like to express.

Commissioner Kennedy: Yes, I'd like to make a comment first. And that is it's clear from the decision that the Planning Commission made that they made that decision absent information that we've recently discovered. Mr. Datsopoulos pointed out that the flood hazard that may exist out there, that they had only become aware of it. I would like to point out that staff, during the initial review of this process, suggested that there was a flooding problem out there, so this isn't new to this project as of yesterday. The flooding problem, or the potential flooding problem, has been know out there since this project came before, or came to the staff for review. That's one point. Some of the issues that are of concern to me, of course, are the non-compliance issue with the Comprehensive Plan, and I think is of major concern. But also, in the Subdivision Design Standards in Article 3 in the very first page of Article 3, there's a discussion about what hazardous lands constitute. And hazardous lands constitute land on which there's evidence of hazards, such as, but not limited to, and the very first item there, is flooding. And that's a serious issue and is discussed in the Subdivision Regulations. In addition to that, improper drainage and high water table and even though we are not safety experts with respect to air

traffic control and we've decided to take that portion out of the subdivision, hazardous land also includes air as well as vehicular traffic hazards. And we heard some testimony today from a person who suggested that if there is an accident, that that person may look to the County and that should also be of concern to us. Additional areas of concern include the noise factor which I did not see any report on at all in response from the development interest as well as the hazardous waste. The hazardous waste is a concern because obviously when you have additional aircraft you're going to have refueling and you're going to have some maintenance, I presume, and associated with that are some materials that have to be properly stored for that refueling and maintenance. There's no discussion of that at all. In addition, there's one issue that is, at least in discussion by the Board, and has to do with the Voluntary Nutrient Reduction Program (VNRP) and some people may say that we have no regulatory process to deal with that, but, in fact, we do have a plan in the area that requires us to act within a time certain to reduce the number of septic tanks as they may impact the surface water in Missoula County in the interchange zone. This clearly is part of that interchange zone. So that remains a concern, it was a concern before this proposal came forward, because it was articulated to the development interest. Those are still concerns as far as I can see and they will be used by me in order to make a judgement on this proposal when it comes back if there is a mitigation proposal.

Chairman Carey: Thank you. Allison?

Allison Handler: I just wanted to clarify, April 5, 2000 is that 60 day deadline, essentially, that the developer is requesting so that would be the earliest day. I guess the earliest day at which this proposal might come back before the County Commission unless there is an additional request to extend that.

Colleen Dowdall: Since this is a public hearing, we are required to do it a little differently. We need to set a date certain and then if we are not going to it at that date certain, I need to extend it, we come here and announce that as part of the public record.

Jennie Dixon: That was my question is to announce the date so that the folks out there know the next time to expect this to come before the Commissioners would be April 5, 2000, and that is a Wednesday, I did check.

Colleen Dowdall: And then the other concern I have is that we have a motion that Barbara made that identifies that we are giving the developer time to mitigate impacts and she mentioned the flooding and then Bill added the non-compliance issue and then Michael has added a number of things and I know when we have tried to do this before there has been much confusion about what mitigation people are required to come back with and I can tell you right now, I'm confused, and so before you vote on the motion I think you need to clarify which of these issues you're including as requiring mitigation.

Commissioner Evans: My motion included only the flooding, but certainly my compatriots have the right to add other things that they want to see in the mitigation plan. But I would suggest that we vote on my motion and then they can add their own.

Commissioner Kennedy: I prefer really to add to your motion, or friendly amendment, not only the flooding but the improper drainage, the high water table and the, to the extent that our Subdivision Regulations address it, the aircraft hazard. Now, this is far from saying that we're going to be involved in safety, but it is saying that this subdivision, should it be approved, will result in increased traffic, air traffic, which, in fact, will increase potential conflicts, if not real conflicts. And to the extent that that is so, I believe that it's necessary to ask for a mitigation of that potential impact.

Colleen Dowdall: And I have recommended against that.

Commissioner Evans: And I was going to say that unless our counsel says that that's something that we have the right to address, I would not want it in my motion. So I call on the chair to vote for the motion that I made.

Commissioner Kennedy: Let me finish the friendly amendment. And the next one would be the noise issue. An additional one would be the hazardous waste with respect to the refueling and maintenance. Those are the ...

Chairman Carey: So, of that, what's not friendly in terms of amending your motion is the issue of aircraft noise?

Commissioner Evans: What I would like is the counsel to tell us what we have the legal right to address and that would be included in my motion. Other than that, Commissioner Kennedy can make his own motion. My motion is what I said, plus what Colleen said it is legal for us to address.

Chairman Carey: So let's enumerate those as best we can.

Colleen Dowdall: The impact of flooding and compliance with the Comprehensive Plan are both issues that were discussed at length in the staff report. The issue of refueling was not address and it's because I believe this is not going to be a refueling station. My understanding of aviation is that requires special requirement, to be a fixed based operation and such, and this was not, these were going to be garages for airplanes. So that's why it wasn't addressed so I don't believe it is an identified impact, but if you folks want to identify it as such and ask that the developer mitigate it, you can do that.

Chairman Carey: Well, let's stay with Commissioner Evans' motion for now and perhaps we'll have another motion come along.

Colleen Dowdall: Okay, I would, yeah, if we could just get through that one and then identify whatever else you want.

Chairman Carey: How about the matter of existing uses. It was pointed out by one of the people who testified that Elkhorn and certain commercial use is 4 miles away. Do we have some obligation there to look at whether or not, in fact, it's a, there is an existing use?

Colleen Dowdall: You know, all of that is in the staff report and the application packet and so what we have, essentially, is contrary testimony and that would just be, have to be, you know, the finding was that it is, the proposed finding from staff is that it is close enough to have an impact on substantial compliance with the Comprehensive Plan which is

required by State law but if your investigation, by reading all of the materials and hearing the testimony of Mr. Martin and others, is that it is too far away, then that's how we can change our findings when you do make a decision.

Chairman Carey: Okay, so for now we're going to have Commissioner Evans motion. We're going to include mitigating the flooding and the Compliance Plan, the possibility of non-compliance with the Comprehensive Plan. Is there a second to that motion?

Commissioner Kennedy: Second.

Chairman Carey: It's seconded. All those in favor say "Aye."

Commissioner Kennedy: Aye.

Commissioner Evans: Aye.

Chairman Carey: Aye. That is approved unanimously. Are there additional motions?

Commissioner Kennedy: The additional motion still remains with respect to the, again, Article 3 of the Subdivision Standards, which, under the definition of hazardous lands, the aircraft or vehicular traffic hazards or congestion are, in fact, by definition, considered in the hazardous land description. And to the extent that it is, in my mind, I would like to see some mitigation effort on their part of that event, because they will be increasing aircraft frequency and therefore increasing potential conflicts with regard to that. That is not how aircraft conduct themselves safely in and out of that airport, but it does recognize the increased numbers, increase the potential for conflict.

Chairman Carey: And that's a motion on the floor?

Commissioner Kennedy: That's a motion.

Commissioner Evans: I will not second it. Let me explain why. At the hearing we had a couple years ago, three years ago, whenever it way, that was a major topic of discussion and my attorney since then has said that's an inappropriate topic of discussion for this Board, therefore, I will not second it.

Chairman Carey: I will second it because I think it's something we do need to explore further. I mean, we have to deal with reality here on some level and we are going to have more airplanes presumably, that's the point of the whole thing. So, I'll second that motion. All in favor, say "Aye."

Commissioner Kennedy: Aye.

Chairman Carey: Aye.

Commissioner Evans: No.

Chairman Carey: Evans, no.

Commissioner Kennedy: One last point. In terms of the hazardous waste, I appreciate the assertion by the development interest that it's not a refueling station and what would satisfy me is a statement that there won't be any fuel or other maintenance materials on there that would constitute a hazardous waste. If they would provide that statement, that would satisfy me. My sense is that anytime you have an airport, you've got fuel and you've got oil and you've got hazardous waste. So, what that statement would do is preclude that from occurring. If they're willing to do that, that's fine. If they're not willing to do it, then I think it's an impact that we need to discuss.

Commissioner Evans: May I point out, and maybe you read it differently than I do, but I believe in the submission it says that none of that will take place except on Lot 1. So I believe that assertion is already in the proposal that has been given to us. Is that not correct, Ron?

Ron Ewart: Light and necessary maintenance of aircraft would be conduction within an enclosed hanger on Lot 1. For example, if someone needs some emergency work done then it might be done. You're normal maintenance is taken care of like a place like Minuteman Aviation, you know, they go over there and they take care of what they need to do there. Just, it's a lot like your own garage in your own home, that type of thing, I mean, there's not a whole lot of difference here.

Chairman Carey: Thank you.

Commissioner Kennedy: Well, my motion still stands. I think that, based on that, there is some acknowledgement there will be some limited service. There's no definition of what limited means and I believe because of the flood condition there, there is a strong potential that when there is a flood out there, and it's not a question of "if," it's a question of "when," that there will be exposure of that hazardous material in that limited service area and there needs to be some discussion as to what those impacts are and how they're going to be mitigated. So my motion stands.

Commissioner Evans: Perhaps something can be put in the covenants to address that as part of your mitigation. And so I will second the motion and ask that there be some comments and clarification of that matter.

Chairman Carey: We have the motion and a second. All those in favor?

Commissioner Kennedy: Aye.

Commissioner Evans: Aye.

Chairman Carey: Aye. Thank you. I have a question for our counsel. We've been asked to approve a request for the Rock Creek Airpark and yet we've taken the airstrip out of it. And I'm wondering how that works? Because we're not dealing with the airstrip anymore, not an airpark, are we?

Colleen Dowdall: Well, and we never were dealing with the airstrip as a lot, it was the common area, and the reason that I wanted it out of the subdivision was because we don't have the capability of determining what we would require to make an airstrip run properly. And for that reason, if they were putting in a new airstrip, we might have had to keep it in there, but it's an existing airstrip that has been there for 40 years and for that reason I did not want the County to be in the position of reviewing that particular part of the development. The fact that they want to call it an airpark, I think is their business, not ours. What we are approving is an 11 lot subdivision. And the other factor is we do not, in Subdivision Review, we don't review use, we review the division of land and if we were going to try to control the use of this through Subdivision Review, we are getting ourselves into a position then of imposing conditions that we can't enforce.

Chairman Carey: But if we approve the request, haven't we in fact approved an airpark?

Colleen Dowdall: We have approved an 11 lot subdivision.

Jennie Dixon: Called Rock Creek Airpark Subdivision, that might be a way to think about it, it's just the name of the subdivision, not that you're approving an airpark.

Chairman Carey: I think what I'm trying to do is kind of get beyond the legalism to the reality that we're allowing, or may allow, a number of airplanes to fly into this airstrip and that if we, it's almost a legal fiction to take the airstrip out of it.

Colleen Dowdall: It is not, in my opinion, because Gary can build 11 hangers, or 15 hangers or 20 hangers without all those permissions. He did not need subdivision review to do that and that can increase the use of the existing airstrip. We don't have any control over that. What we have control over is the division of land and, if you read the proposed findings, we acknowledge that the reason we want that condition out of there is because we don't want to control an airstrip. It's an existing airstrip that this division of land is not going to necessarily impact the use of that airstrip. There may be people who will buy lots there that don't own airplanes. We won't be controlling that from here on out, that's not, once we approve a division of land and the plat is filed, our control ends, in subdivision review. And that's why everything we try to do in subdivision review is so difficult and it is why we give people expectations that, well the government reviews this so if an airplane crashes in my yard, their liable, that's simply not the case. It is simply not the case, it's an existing airstrip and we would be approving only a division of land. And we've made that clear in our findings and we've made that clear at this hearing.

Chairman Carey: Thanks. Commissioner Kennedy?

Commissioner Kennedy: I don't disagree with counsel. I would though, however, read from the general provisions of the Subdivision Regulations, which governs how we subdivide land. And it says: "The purpose of these regulations is to promote public health, safety and general welfare by regulating the subdivision of land to prevent overcrowding of land, to lessen the congestion on streets and highways and to provide for adequate light, air, water supply, sewage disposal, parks and recreation, ingress and egress and other public requirements to require the development in harmony with the natural environment, to protect the rights of property owners and to require uniform monumentation of lands, subdivision and transfers of interest of property, according to M.C.A. 76-3-102." Now you can infer about anything you want from that, but I infer that there is some use component to that. We can't really judge on whether some proposal meets the public health, safety and general welfare requirement unless we understand somewhat about its use.

Commissioner Evans: But what Colleen is saying is we are not approving airplanes or airparks. We are approving only land use which would be hangers and houses.

Colleen Dowdall: And it is even more limited than that. We are approving 11 lots that we've been told will be used for residential purposes but that doesn't matter, we're approving 11 lots that can be used for, aside from their covenants which we have not required be a position of in terms of use, we could have 11 more Rock Creek Lodges. There's any number of ways that if this doesn't sell as an airpark, that those 11 lots could be used. And we don't control that, we control use through zoning and this isn't zoned.

Chairman Carey: Thank you. If there are no further comments, we will continue this hearing on Wednesday, April 5, 2000, at our public meeting. Is there other business to come before the ...

Milt Datsopoulos: Mr. Chairman, may I just make one request, that you have your staff transcribe both motions so that we have a copy of them so we know specifically what to address so we don't come back here on the 5th and somebody challenges it in terms of the adequacy.

Chairman Carey: Thank you. We will. Anything else? No other business? We're in recess. Thank you.

There being no further business to come before the Board, the Commissioners were in recess at 3:25 p.m.

THURSDAY, JANUARY 27, 2000

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. At noon, Commissioner Kennedy attended the Homeownership Center Grand Opening and Luncheon.

Claims List – The Commissioners signed the Claims List, dated January 27, 1999, batch number 454, with a grand total of \$97,265.28. The Claims List was returned to the Accounting Department.

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with Women's Opportunity and Resource Development, Inc.(WORD) approving a grant for Family Basics (WORD) to develop a revolving-fund

program for households that qualify for Section 8 rental assistance through MHA and the Human Resource Council. The term will be January 27, 2000 through January 31, 2010. The amount will be \$24,200.00, of which \$20,00.00 will be used for program activities outlined by Family Basics and \$4,200.00 will be available for administration of the program.

Counter Offer – The Commissioners approved a Counter Offer from Todd Construction for Lot 7, Block 13, Missoula Development Park with the following changes:

1. The offer is contingent on the purchaser to provide detailed plans of building design, site plan, and use plans to be approved by the architectural control committee and County building permits and inspections prior to closing.
2. Sellers to keep property on the market and accept back up offers only.
3. Seller agrees to have all utility services (water, sewer, gas, electric) extended to property no later than June 1, 2000, and if not, seller will have an additional 45 days for completion.

The document was returned to Barb Martens in the Projects Office.

FRIDAY, JANUARY 28, 2000

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, Commissioner Carey attended the Economic Outlook Seminar held at the Holiday Inn; and Commissioner Evans attended a meeting of the Judicial Standards Commission.

Claims Lists -- Commissioners Evans and Kennedy signed the two Claims Lists, both dated January 28, 2000, batch numbers 441, 453, 456 and 457, with a grand total of \$56,874.13 and batch numbers 458 and 459, with a grand total of \$15,439.90. The Claims Lists were returned to the Accounting Department.

Plat – The Commissioners signed the Plat for Katie Ellen Acres, a minor subdivision located in the SW1/4, Section 11, T 15 N, R 22 W, PMM, Missoula County; a total gross and net area of 14.68, with the owners of record being Sean W. and John W. Scally.

Payroll Transmittal – The Commissioners signed the Payroll Transmittal for Pay Period 01, Pay Date January 14, 2000 in the amount of \$756,394.93. The document was returned to the Auditor's Office.


Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chairman
Board of County Commissioners

MONDAY, JANUARY 31, 2000

The Board of County Commissioners met in regular session; all three members were present in the forenoon. In the afternoon, Commissioners Carey and Evans traveled to Ronan for a tour of Jore Corporation.

Indemnity Bond -- Chair Carey examined, approved, and ordered filed an Indemnity Bond naming Ludmila Chinikaylo as principal for Warrant #19291 issued January 5, 2000 on the Missoula County General Fund in the amount of \$143.22 now unable to be found.

Contract Amendment – The Commissioners signed a Contract Amendment with the State of Montana, Department of Corrections, adding Section 5 (D) – Prepayment of Per Diem which states that the Department agrees to advance the County per diem payments for the first 206 days of operation during FY00 and the County agrees to reimburse the Department for this entire advance payment (\$686,276.64) prior to June 30, 2000. One original document was recorded and one was forwarded to the Department of Corrections in Helena.

TUESDAY, FEBRUARY 1, 2000

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.

Claims List -- Commissioners Carey and Kennedy signed the Claims List, dated February 1, 2000, batch number 462, with a grand total of \$619,100.58. The Claims List was returned to the Accounting Department.

Claims List -- Commissioners Carey and Evans signed the Claims List, dated February 1, 2000, batch number 464, with a grand total of \$26,169.29. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Letter -- The Commissioners signed a Letter to Judge Larson permitting the Court to use space on the first floor of the old Courthouse for the month of February 2000.

Budget Transfer - The Commissioners signed Budget Transfer No. 00-008 for the Health Department transferring \$20,000 from Tobacco A/R to Tobacco 2000-01 as the budget was loaded under the wrong revenue code.

Motion Approval -- The Commissioners signed a Motion to Approve Submittal of the Missoula County Rural Domestic Violence and Child Victimization Enforcement Grant Program Continuation Proposal 96-WR-NX-0010. The document was returned to Leslie McClintock in the Office of Planning and Grants for further handling.

Proclamation -- The Commissioners signed a Proclamation naming February as the month of *Love Without Fear* in order to work towards the elimination of domestic and sexual violence in the City and County of Missoula; therefore, encouraging participation of citizens in the scheduled activities and events sponsored by the Missoula Family Violence Council, the Missoula Crime Victims' Advocate Program, the Missoula YWCA, the University of Montana Student Assault Recovery Services and Women's Center and the Seeley-Swan Talk, Education and Protection (SSTEP) Family Violence Council.

Resolution -- The Commissioners signed Resolution No. 2000-013, an annexation of land to the Frenchtown Rural Fire District described as Tract 21 and Tract 24 of Certificate of Survey No. 1914 and Parcel 20A-1 of Certificate Survey No. 2666, all in Missoula County.

Resolution -- The Commissioners signed Resolution No. 2000-014, an annexation of land to the Seeley Lake Rural Fire District described as The Fly Inn Subdivision located in the SE ¼ of Section 36, T 17 N, R 15 W, Powell County, Montana.

Other items included:

1) The Commissioners discussed the following:

1. Risk Manager's request for salary increase.
2. Mike Absalonson's letter regarding windows on the fourth floor.
3. Request for kitchen equipment from the old jail.
4. Request from Legislative Audit Committee to complete survey on subdivision regulation process.

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

WEDNESDAY, FEBRUARY 2, 2000

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioners Evans and Kennedy attended a meeting of the Mullan Trail Homeowners Association held at Hellgate Elementary.

Certification of Acceptance - Commissioner Evans signed a Certification of Acceptance for Stenerson Road, from the intersection with Huson road thence southwesterly 820.48 feet to the intersection with Mullan Road, to be under County maintenance. The document was returned to the Surveyor's Office.

PUBLIC MEETING -- February 2, 2000

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

Public Comment

None

Routine Administrative Actions

Commissioner Kennedy moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$814,849.18. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Proclamation: Love Without Fear Month

Leslie McClintock, Grants Administrator, Office of Planning and Grants, read the Proclamation.

WHEREAS, domestic and sexual violence, mainly perpetrated against women and children, continues to be a pervasive social problem because of the imbalance of power related to gender and age; and

WHEREAS, the crimes of domestic and sexual violence are not confined to any group or groups of people, but cross all social and economic barriers; and

WHEREAS, the problems of domestic and sexual violence are exacerbated by societal biases and indifference; and

WHEREAS, the crimes of partner assault, family member assault, and sexual assault violate an individuals' privacy, dignity, security and humanity because of the systematic use of physical, emotional, sexual, psychological and economic control and/or abuse; and

WHEREAS, the impact of domestic and sexual violence is wide-ranging, profoundly affecting not only its survivors but family, friends and society as a whole; and

WHEREAS, survivors of domestic and sexual violence have been in the forefront of efforts to bring peace and equality to our homes and communities; and

WHEREAS, *Love Without Fear* is a value that we hold in the City and County of Missoula;

THEREFORE, we, the Board of County Commissioners and the Mayor of the City of Missoula, do hereby proclaim February as the month of

LOVE WITHOUT FEAR

in the City and County of Missoula, and urge all citizens to actively participate in promoting *Love Without Fear* in all aspects of personal and community life and participate in the scheduled activities and events sponsored by the Missoula Family Violence Council, the Missoula Crime Victims' Advocate Program, the Missoula YWCA, the University of Montana Student Assault Recovery Services and Women's Center, and the SSTEP (Seeley-Swan Talk, Education and Protection) Family Violence Council in order to work toward the elimination of domestic and sexual violence in the City and County of Missoula.

Leslie McClintock stated there were several events scheduled for people who would like to participate. An ecumenical healing service will be held Thursday, February 17, 2000, at 7:00 p.m. at Christ the King Church, 1400 Gerald Ave. The Missoula Family Violence Council is also selling tote bags for \$12 as a fundraiser.

Commissioner Evans moved that the Board of County Commissioners approve the joint proclamation to designate February as *Love Without Fear* month in the City and County of Missoula. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Kennedy stated there was good news and bad news related to family violence. The good news is there are many programs that acknowledge and deal with this issue and the bad news is that there is a need for these programs. The community needs to work harder to eliminate the problem of family and domestic violence. The City and County governments acknowledge these are very important programs at this time in history.

Chairman Carey stated it was significant that high school students were being involved in this program to bring attention to the problem at a much earlier age, in a proactive manner.

Decision: Request to Vacate a Portion of Clearwater/Short Line Railroad Right-of-Way (Highway 12 West - Lolo)

This is a petition to abandon "portions of the former Clearwater Short Line Railroad Company right-of-way along Lolo Creek in Section 36, Township 12 North, Range 22 West in Missoula County, Montana."

The reasons for the request are as follows:

1. The Clearwater right-of-way only duplicates the route of U.S. Highway 12 in Section 36, and the Clearwater right-of-way is in the same location as U.S. Highway 12 at both the east and west sides of the Section.
2. As required by MCA 7-14-2615(3) and (4), the Clearwater right-of-way does not provide access to any public land or private land which cannot also be accessed by U.S. Highway 12, with the exception of the land owned by Amidnamin Manoocheche (Mike Amidi), which has other sources of legal access.
3. The abandonment of the Clearwater right-of-way will help the landowners along the right-of-way remove a cloud from title to their properties.

The following landowners have been notified:

Charles T. & Kimberly A. Satterlee, Ivy Family Living Trust, Gary R. & Dorothy M. Cooper, Ronald S. & Janice Henderson, Debra Bowey, Potomac Corp., Amidnamin Manoocheche, Willard N. Morgan, State of Montana, Bob Storer, The Burlington Northern and Santa Fe Railroad Company.

Michael Sehestedt stated the public hearing on this matter was held on Wednesday, January 19, 2000 and a site inspection was conducted by County Surveyor Horace Brown and Commissioner Kennedy on Tuesday, January 23, 2000. The right-of-way was deeded to the County by Northern Pacific who acquired it from the Clearwater Short Line Railroad. In many places the right-of-way is under or crisscrosses and parallels the current U.S. Highway 12

(Lewis and Clark Highway). This is a continuation by property owners to resolve the right-of-way issues that create a cloud on their titles. The County acquired the right-of-way in the 1930s. Over the years, parts have been quit claimed and parts have been vacated and parts have reverted. A significant portion of what was deeded was acquired by condemnation in the early 1900s. Because the manner in which it was acquired, all the railroad had to convey to the County was the right to construct, operate and maintain a railroad. He asked when the Board grants the petition for vacation, they make it clear that only those portions of Clearwater Short Line Railroad right-of-way in Section 36, Township 12 North, Range 22 West, which are outside the right-of-way of U.S. Highway 12 as currently established, are being vacated.

Horace Brown stated the Montana Department of Transportation requested that a strip approximately 10 feet wide be reserved in order for them to obtain a 160 wide right-of-way. They currently have 150 feet most of the way down. Also, he requested that any landowner that now uses this right-of-way to access Highway 12 have an easement reserved that is wide enough for their use so they have the same level of access they have today.

Commissioner Kennedy stated that he and Horace Brown visited the site and found that it is downstream and different from the vacation on the Hale property, and also further from the creek. Exhibit A shows the Clearwater right-of-way and the Lewis and Clark Highway right-of-way. Exhibit B shows, in addition to that, a County road, and he wanted to know if that County road exists legally now and if so, why did the petitioners not request closure of that road as well.

Peter Dayton stated in the petition it says that the County road rights-of-way, established in 1888 and 1895, were not the subject of this petition. Further to the east in Section 36, the road is quite a bit north and people it. He did not want to create any problems on the County roads. The abandonment was for the Clearwater Short Line Railroad right-of-way only.

Commissioner Kennedy stated he did not want any confusion and that the County road right-of-way would still exist. He also stated he has not seen a petition from the Department of Transportation with respect to their request that Horace Brown mentioned. He felt it was not appropriate to grant an easement in the DOT's favor without a formal request from them.

Commissioner Evans stated if that was the case she was not willing to proceed because she was not willing to deny their request. Interaction is often required with the DOT, they rarely ask for anything and the County is always asking favors of them.

Michael Sehestedt stated at this point only the old Clearwater Short Line right-of-way is being dealt with. The map shows part of it is under the existing Highway 12, part of it is completely separated and then comes back and crosses the highway at the Section line. DOT can be accommodated by using the vacation language he stated and adding a provision for those parts of the highway right-of-way immediately adjacent to the Clearwater Short Line retain the 10 feet wanted.

Peter Dayton stated he thought DOT had withdrawn their request.

Horace Brown stated he had heard nothing from DOT that would indicate they wanted to change anything. Their normal right-of-way for a highway like this is 160 feet, which is why they made the request.

Peter Dayton suggested language that would say the County is abandoning the Clearwater Short Line right-of-way with the exception of those portions of the railroad right-of-way which lie within 80 feet of the center line of the highway. That would be something the surveyor could locate.

Michael Sehestedt stated that would be acceptable except for where the right-of-way separates from the highway. The language could say 80 feet wherever the right-of-way is adjacent to the highway. He also suggested the decision on this could be continued for two weeks to get clarification from the DOT as to whether they were still interested or not.

Commissioner Kennedy stated that would be his preference.

Michael Sehestedt stated he would find out if the DOT was still interested then he could prepare language for the Commissioners consideration and Peter Dayton's review. If they are not interested, the language as stated would stand.

Chairman Carey stated given the history of this complex issue, extra time should be taken so it is done correctly.

Peter Dayton stated he had maps from the DOT that show the highway right-of-way is slightly more complicated than shown in the exhibits. There are some differences between the construction plans and what actually exists.

Michael Sehestedt stated the assessors map he was using tends to be fairly straight forward. He asked that this matter be continued to determine what, if anything, the highway wants reserved. When that is settled, appropriate language can be drafted.

Commissioner Evans stated that was acceptable.

Commissioner Kennedy stated that was acceptable. He also cautioned that using the 80 feet on each side of the highway needed a specific place to determine that measurement. The measurement should perhaps be taken from the center of the existing traveled way. Whatever method is used, it needs to be consistently applied.

Chairman Carey stated this action would be postponed to February 16, 2000.

Hearing: Fire Annexation Petition – West Carlton Creek Road Area (Florence Rural Fire District)

Chairman Carey opened the public hearing.

A petition has been received by the Clerk & Recorder's Office to annex a parcel of land, located in Missoula County, into the Florence Rural Fire District.

The petition has been checked and verified. It contains signatures of more than 50% of owners of the privately owned land in the area to be annexed and a majority of taxpaying freeholders within the area described, thereby meeting the requirements of 7-33-2125 M.C.A. for annexation of adjacent territory.

The area to be annexed is described as follows: "The E 1/2 NW 1/4 and the W 1/2 NW 1/4 of Section 34, Township 11 North, Range 20 West; and the NE 1/4 NE 1/4 of Section 33, Township 11 North, Range 20 West, located in Missoula County, Montana (West Carlton Creek Road area)."

Gordon Gieser, Chief of the Florence Rural Fire District, stated that Ben and Elsie Maier were in the fire district as it was created in 1967. They annexed out in 1972, along with the Anaconda Minerals Company and Mountain States Telephone and Telegraph, over a tax issue. The Maiers had a couple of lighting-cause fires in concurrent years on the Lolo National Forest which the Florence Rural Fire District suppressed under a cooperative agreement with the forest. Last year the Maiers had a slash fire which Florence Fire also suppressed, at no cost to them. The Maiers have now requested annexation again into the Fire District so they have protection. The district views this as a housekeeping issue and has no problem with the annexation.

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

Commissioner Evans moved that the Board of County Commissioners approve the annexation of a parcel of land, located in Missoula County, into the Florence Rural Fire District, described as "the E 1/2 NW 1/4 and the W 1/2 NW 1/4 of Section 34, Township 11 North, Range 20 West; and the NE 1/4 NE 1/4 of Section 33, Township 11 North, Range 20 West, located in Missoula County, Montana (West Carlton Creek Road area)." Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Consideration: Loloview Acres No. 2, Lot 5 (3 lot Summary Subdivision)

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

Loloview Acres No. 2, Lot 5 is the subdivision being considered today. It is a 3 lot subdivision of Lot 5 of Loloview Acres No. 2 Subdivision. It is located about 6.4 miles west of Lolo off Highway 12. Access is gained by turning on Mill Creek Road, crossing Lolo Creek on a County bridge, then approximately 600 feet up Mill Creek Road turn west on Thayer Road. The site is located about 900 feet west up Thayer Road on the north side. At the end of the property, Thayer Road makes a 90 degree turn to the south.

The property is 3.24 acres and the request is to divide it into three 1.08 acre lots. It is mostly grass and knapweed with about an 8% to 10% slope. It slopes down from the front to the back (south to north). The northwest corner of the property is wooded and abruptly slopes down to an old floodplain of Lolo Creek. The applicant, Harry N. Walker, shows this wooded area as a no build zone on the plat.

There is a mobile home on the southeast corner of the property. The plan is to replace the mobile with a stick built or modular home and to sell the other two lots for the same type of development. The Comprehensive Plan designation for this area is shown in detail on a map attached to the staff report. The subject property is located in the rural medium density designation of 1 dwelling unit per 5 acres, but is exactly adjacent to the boundary of the designation of suburban residential, 2 dwelling units per acre, although sanitary restrictions limit this to 1 dwelling unit per acre currently.

The properties generally to the north of Thayer Road and east of Mill Creek Road in this area are 1 to 2 acre tracts. The properties south and west of Thayer Road are generally larger tracts, 5 to 10 acres. The Long Range Planning Staff has recommended approval of this request because of this development pattern and because the applicant proposes to protect the resources on this property with the no build zone.

The applicant has asked for two variances. Thayer Road is a 20 foot wide County maintained gravel road in a 50 foot wide public road and utility easement. The applicant is dedicating an additional 10 feet of right-of-way to meet the 60 foot requirement for a public road easement but is asking for a variance from the required 24 foot roadway surface width of Thayer Road. Staff is recommending approval of this variance request. The applicant is also asking for a variance from walkways in subdivision. Staff is also recommending approval of this request. The applicant has included a statement on the plat of the waiver of the right to protest an RSID to improvements, including walkways, to Thayer Road, based on benefit. The Health Department expressed concern about the additional traffic on Mill Creek Road, in addition to Thayer Road, in terms of dust generation, if this subdivision is approved, since both road are gravel. They recommended the waiver statement apply to both Mill Creek Road and Thayer Road and include reference to dust control. The County Surveyor concurred on including Mill Creek Road in the waiver and staff is recommending that language be included in the waiver statement as noted in Condition 1.

Staff is recommending approval of the subdivision, with three other conditions as noted. The applicant is proposing in their covenants to require 50 foot building setback lines on all three lots on all sides, rear, front and sides, to try to encourage development of these lots in a rural way, so there are large spaces between the homes. Staff is recommending the requirement for a 50 foot setback on the front be removed. This would encourage longer driveways and push the houses back further on the lots closer to the slope. Condition 2 states the covenant section regarding building setbacks be revised to require a 50 foot setback from the side and rear property boundary lines.

There was a question at Planning Status as to whether they would be able to fit septic systems, drainfields and homes on the lot in reference to the building setbacks. Doug Kikkert from the Health Department stated he did not see any problems, they would be sufficient room on each lot.

The fire department commented they have no problem with access to the property as proposed. They did ask that the developer contribute \$100 per lot to the large diameter hose fund, as noted in Condition 4.

Condition 3 also discusses covenants. They do a good job addressing fire standards, wildlife standards, driveway maintenance, weed control, building setbacks, the no build zone and land use. Staff is asking that Article II-2 of the covenants, which addresses which parts of the covenants cannot be changed without governing body approval, include driveway maintenance, weed control, building setbacks and no build zone in addition to wildlife, fire standards and land use. However, the Commissioners have asked that driveway maintenance not be included in the covenants that cannot be changed without their approval, as there are no shared driveways. Revised conditions reflecting this change have been presented.

Chairman Carey asked for public comment.

Ron Ewart, Eli & Associates, developer's representative, was present. He thanked Denise Alexander for her work on the proposal. They are in agreement with the conditions. The density in this area is somewhat higher than other areas outside of Lolo. Even after driving Highway 12 most of his life, he was unaware of the density in the Mill Creek area. It is somewhat hidden from the highway. Lolo Creek Store is on Highway 12. Woodman School is about 2 miles west and serves grades K-8. This property is located about 6-1/2 miles from Lolo. Fire response would be approximately 10 minutes. Covenants are being placed on the property to limit the land use to single family residential and to try to keep buildings located in the middle of the property so there would be open space in between the houses. The property slopes at about a 10% grade, it is a beautiful area with great views of the mountains. The homes in the area are modest but very nice and well kept and the developer would like to continue that concept. The property is in an area where there are some older subdivision, dating back to the early 1970s. The area hasn't grown very fast since that time. The property does lend itself well toward residential development if done correctly. There are several pages in his packet that address the Comprehensive Plan issue. He felt the conditions were fair and would be available to answer any questions the Commissioners may have.

Kimberly Jakubowski stated she lived at 15470 Thayer Road. She read from a prepared statement. "Two years ago my husband and I purchased our property on Thayer Road due to the existence of the 1975 Comprehensive Plan. We purposely sought out an area within a reasonable drive to Missoula but in an area free from further development. By changing the rules, you're changing the nature of the community and forever setting a precedent that can possibly be irreversible. Having said that, there are other more pressing concerns that I would like to see addressed. The neighborhood off of Mill Creek Road, with an allowance of 2 dwellings per acre, is overcrowded. I am concerned that the facilities and services available, the police and fire departments, will not be able to support an increase in residential density. Unfortunately, we experienced an electrical fire in our pump house recently and it took the fire department close to 15 minutes to respond. There was nothing left to the structure. This is not meant to be a negative reflection on the fire department. The timeliness of their arrival is due to the distance they had to travel. The greater number of residents that far from a fire house will only increase the threat of a forest fire to the neighbors on Thayer Road. As a new mother living in the Woodman School District, I am concerned about future classroom overcrowding and the limited availability of resources at Woodman School. The small teacher to student ratio provided by Woodman was one of the motivating reasons for purchasing our home on Thayer Road. Mr. Hall's point that the neighborhood is served by a small commercial venture that offers basic needs by Lolo Creek is a downright absurdity. In the two years I have lived up Thayer Road I can recall three days in which the Lolo Creek Store has been open and these were all in 1998. It does not serve the needs of our community. You have to drive almost 7 miles just to get to Lolo to get a gallon of milk. I chose that inconvenience when I chose to live on Thayer Road, but I really don't want your decision to be made based on the fact that you think that there's a convenience nearby, because there is not. Having said that, the estimate of 20 additional trips on Route 12 is therefore inaccurate. It requires a 7 miles trip just to get back to the town of Lolo. In addition to the increased number of trips on Route 12, as Ms. Alexander pointed out, Thayer Road and Mill Creek Road will also be negatively impacted. I am very concerned about the dust pollution as well as the wear and tear on the road and our vehicles as well as the increase of County road maintenance and the maintenance of our vehicles. Here again I am concerned about the statement where the owners are willing to waive their right to future protest any required improvements to Thayer Road which might mitigate transportation concerns. What about the rest of the owners on Thayer Road. How many other residences have waived their right to protest improvements. With less than a dozen residential dwellings on Thayer Road, three waivers is a large percentage of our neighborhood. By allowing this you'll be decreasing our collective right to object to any further road improvements. I appreciate Mr. Hall's disagreement that 1 acre plots do not maintain the rural character stated by Mr. Ewart. I'm thankful that he brought up this point. I do not want to be seen as a "Not In My Back Yard" neighbor. That's not at all what I'm doing. However, people decide to purchase property in a community desirable to their tastes. We decided to make our home and start a family in this community. You will be changing the dynamics of this neighborhood if you choose to deviate from the 1975 Comprehensive Plan's recommendation. There's a significant difference between the neighborhoods and the homes on Thayer Road than there are in the Mill Creek basin area in Mill Creek and its offshoots. To take it a step further, I'm concerned about the impact it would have on both Lolo Creek itself and the wildlife in the area. It is a daily occurrence to see deer crossing Thayer Road and passing through Lot 5 on their way down to the creek. To put more houses up would definitely have an impact on them. There is also the question of how this would impact the several families of golden eagles which frequent the pastures on Thayer Road in search of little edible rodents, but it's very enjoyable to watch them. And an even greater concern to me is how the increase in population will affect the already limited areas available to the cat and deer population of Lolo Peak. I need only remind you of the cat attack suffered by visitors to Mount Jumbo and the recent capture over on North Reserve. I have had several of these animals in my pasture over the past two years. Keeping to my concerns about our limited resources, as a avid fly fishing household, we're very concerned about the additional septic systems and their impact on Lolo Creek. As you can see from the site survey, the drainage does head right for the creek. My husband and I have enjoyed beyond words the benefits of living in this rural community. As for my neighbors, I'm sure, if given the opportunity, they would be here as well expressing their concerns. Unfortunately, the sign indicating the development was posted for less than 24 hours. Either it blew down or was taken down, but the neighborhood really has not had adequate notification of this subdivision request. To state again, our community is not able to support the demands for more dense population. The development pressure on the town of Lolo is not such that it would warrant and need to increase further development in an area so remote, directly from the town of Lolo. Thank you for your time."

Commissioner Kennedy asked Ms. Jakubowski where she lived in relation to this subdivision?

Kimberly Jakubowski stated she lived around the corner at the end of Thayer Road.

Peggy Chilcote stated she was with the Lolo Community Council and lived at 204 Tyler Way in Lolo. The Council did not have a chance to address this issue as they did not meet during the month of December. They are in the process of rewriting the Lolo Land Use Plan and felt a precedent would be set by this change before the plan is complete. The Council asked that the 1975 Comprehensive Plan be followed at this time or suggested the developer wait until the new Land Use Plan is complete. The water is also an issue. The septic fields are higher than the creek and would cause concern. She too has never found the Lolo Creek Store open. The Highway 12 intersection will be getting a stoplight, but this subdivision will account for several more trips per day to Lolo. They are trying to finish the Land Use Plan as soon as possible, but as it is not complete, they ask that the Commissioners follow the 1975 Comprehensive Plan for this area.

Colleen Dowdall stated she felt this area was outside the Lolo planning area, as that was discussed with staff during the meetings about this subdivision.

Peggy Chilcote stated in the new plan, they were looking at going all the way to pass, including all of Highway 12 to the Ravalli County boundary.

Colleen Dowdall stated she was not aware of those plans.

Commissioner Evans stated getting the Lolo Land Use Plan to this point has taken a considerable amount of time and she was not willing to ask the developer to wait until the plan is finished as that may take quite a while.

Chairman Carey asked if there was any timeframe for completion of the new plan?

Peggy Chilcote stated there are rough drafts completed but no input has been received and she did not know where they stood. The process began six years ago and was moving forward but has since stalled. The Lolo residents are very upset with the time the process is taking and the lack of progress.

Commissioner Evans stated there is push to get the plan done, but it is not the only thing that is in planning, there are numerous other projects in the County that all require time and attention. She felt this subdivision was not changing the 1975 Comp Plan and staff has found it in substantial compliance. If the subdivision does not deviate enough from what is surrounding it then there is substantial compliance. This subdivision is only for two additional houses.

Kimberly Jakubowski stated she understood only two house were being talked about, but by moving the line of demarcation, a precedent is being set. That line can be pushed out again and again.

Commissioner Evans stated that during the six years of growth management discussions, it has been said that growth should occur in concentric circles. Growth has to go somewhere and this subdivision is not out of character with what is in the area. Growth is going to occur and whoever owns vacant land has the right to do something with it. If this was for 50 houses, she could see there would be a problem, but two houses does not create a problem.

Commissioner Kennedy stated he had a problem with staff finding Comprehensive Plan compliance based on the adjacent development to the east of this property. He agreed that the properties to the east are in an area that would not be in contradiction to the Comp Plan, however, the western border of the eastern-most subdivision included a park along Lolo Creek. To determine Comp Plan compliance with surrounding areas, the properties to the west need to be looked at rather than the properties to the east. It appears that the eastern boundary line of the property is the line where the density of houses and lot size increased. West of that point, lot sizes are substantially larger and includes the park area. He found it difficult to find Comprehensive Plan compliance. There is no zoning in the area, but absent zoning, the guiding document is the Comp Plan.

Colleen Dowdall stated a Comp Plan line is not a zoning line. When looking at a 25 year old plan, the reasons for the designations must be looked at to determine if a particular parcel complies and not treat the line as a hard black line. State law requires substantial compliance with the Comp Plan, not strict compliance. If it was strict compliance, it would be zoning.

Commissioner Kennedy stated the driveway maintenance agreement provision had to do with whether there would be access off of Thayer Road for the individual lots. Has that question been resolved. Did Horace Brown have any problem with these lots having individual access off Thayer Road? The reasons for the question had to do with the easement request for the County road and the maintenance agreement for the driveways.

Horace Brown stated access off of Thayer Road would be granted.

Commissioner Kennedy stated the request for the additional road easement could be solved by putting the road in the center of the existing right-of-way as the road was constructed on the north side of the right-of-way.

Horace Brown stated the traveled way is already on the north side and would probably not be rebuilt by the County or through an RSID for a quite some time. That 10 feet on the north side gives more room and makes the easement 60 feet. If the developer wants to donate the easement, he had no problem accepting it.

Ron Ewart stated the developer offered the easement because it was one less variance request and to put the right-of-way further from the edge of the road. It presented no problem for the developer.

Chairman Carey closed the public comment section.

Commissioner Kennedy stated he disagreed with counsel about making judgments on Comp Plan compliance. It does give the only method to make judgements and he disagreed with the finding that the property to the east should be used to determine compliance. He could not make that finding and could not support this subdivision.

Commissioner Evans stated she agreed with staff. Growth will occur and she saw nothing that said only one side of the line was used to determine compliance. These two houses will not add substantially to the area and totally change the character. If there is any credibility to be given to the Growth Management Plan, then this subdivision should be

allowed. The number of trips added to Highway 12 will not be that big a deal, most people who live in the Mill Creek area stop in Lolo before they go home. If this were denied and taken to court, there would be no way to substantiate to the court's satisfaction any legitimate reason for denial.

Chairman Carey stated that during the Comprehensive Plan appeal for the communications tower on Mount Dean Stone, there was no zoning and the decision fell back to the Comp Plan. In this case, they are not falling back on the Comp Plan but saying the reality is there are others next door so this one could be allowed.

Colleen Dowdall stated that the distinction was that on Mount Dean Stone, the Comp Plan designation did not list towers as a use, but the zoning allowed in compliance with the Comp Plan did allow towers. The Comp Plan is very broad and does not list uses. It gives a purpose for the 1 per 40 density designation, such as agricultural lands, natural resources or not being ready for development. However, 1 per 40 zoning does permit utility installations. Relying solely on density, this subdivision would not be allowed, but the entire Comprehensive Plan was looked at, as was done by both staff and Ron Ewart. If there is a plan where there is no zoning and the density does not match, the reason for the designation is looked at, and whether the proposal would be contrary to what the purposes for the density are. The line on the Comp Plan map is not meant to be a zoning line or a line that says all uses stop there. The line is meant to be a planning tool. When development comes in on the edge of such a line, it needs to be evaluated on a case by case basis to determine compliance. The Comp Plan is a hard issue and Missoula County uses it more strictly than other counties in the state. It is not the only tool available, it is only one of the criteria.

Chairman Carey stated it was a big leap going from 2 per acre to 1 per 5. It was allowing 5 times more development than the Comp Plan designation.

Colleen Dowdall stated this was not a density requirement. The Comprehensive Plan is made up of many elements, one of them is the density designation. She has spent the past several years convincing the planning staff to not focus on the density designation only, but to look at the purpose behind that and what it is trying to accomplish. The 1 per 40 is just one requirement, but there are other elements to protect, such as agricultural use. That use can be protected other than a 1 per 40 residential density designation. The other goals of the designation need to be looked at for compliance. Staff must move away from relying solely on the density designation because it is only one element in the Comprehensive Plan.

Chairman Carey asked if this needs to be given more weight than other factors?

Colleen Dowdall stated it is a matter of whether the Board thinks going from 1 per 5 to essentially 1 per 1 is contrary to the goals of the 1 per 5 to such an extent that it will destroy whatever the 1 per 5 designation was intended to protect, and would there be any way to mitigate that. If this is denied then the opportunity for mitigation needs to be offered to the developer.

Chairman Carey stated that to him this was allowing 5 times the density than what was envisioned by the Comp Plan.

Colleen Dowdall stated she preferred to say this was going from rural medium density to something slightly less dense than suburban residential density. There is no 1 per 1 designation in the Comp Plan.

Commissioner Evans stated that "sub-urban" means it is not quite urban. In looking at the housing in the area, two houses is not going to change the rural nature of the area. If this was a proposal for 500 houses, then that would no longer be rural.

Commissioner Kennedy stated he agreed with counsel that there is no demarcation line that was meant to be established in the overall Comp Plan, although there can be if there is an evident topographical feature to protect. In his mind there is a situation where it is acknowledged that points west of the easterly boundary of this area, part of which is preserved in a park, have larger lots and more sparse development. If the character of the Comp Plan is changed then others who own the balance of those tracts could propose to do the same. Instead of looking west to the area of large open spaces they would be looking east to higher density. There would be no end. There is no way to halt that perception. In his view, all sides need to be looked at in making this determination and in this case, in his mind, they are obligated to look west rather than east at the density. The implication goes beyond just density, it goes to the dust, the effect on Lolo and the effect on the roads. In his mind, Comp Plan compliance cannot be found in this particular area for the reasons stated.

Ron Ewart stated that around the corner on Thayer Road, some of the lots have multiple units on them. One of the lots has a mobile home court, with at least three mobile homes. The lot next to that has a triplex and a mobile home. It is more than just the lots, there is more density. At the top of the map for the Comp Plan it says that it is a representation of the goals of the plan. Each goal must be studied. He was unable to find where this proposal was contrary to any of those goals. The first goal says "to provide for the logical expansion of communities while maintaining environmental quality and keeping the expenditures for public services and facilities at a reasonable level." His analysis shows how that goal and other goals are being met.

Chairman Carey stated if this is changed to a 1 per 1 density, looking both east and west, what if a proposal for 500 acres came in. In theory, they could have 500 houses.

Commissioner Evans stated it would be unlikely the Health Department would allow 500 septic systems. They have to approve proposals as well and would not approve 500.

Chairman Carey stated if it was left with the Comp Plan of 1 per 5, then there could be 50 homes.

Colleen Dowdall stated the Comp Plan was not being changed. It is simply an interpretation that this falls somewhere between suburban residential and rural medium residential. Ron Ewart's analysis in the submittal is pretty detailed in what the Comprehensive Plan says. The findings of fact put this analysis in a succinct form to find Comp Plan compliance. From a legal standpoint, this is not even a close call for Comp Plan compliance.

Chairman Carey stated there was still the issue of the new Lolo Land Use Plan for this area.

Commissioner Evans stated she did not want to negate what was being done, but would not hold up a proposal because a plan is coming somewhere down the road. A decision must be made based on the rules in place at the time of submission of the proposal, that is the only legally defensible position.

Colleen Dowdall stated there is someone else in Lolo with 80 acres who has been told for two years he has to wait for the new plan. He is losing patience. It has to be assumed that the Lolo plan may never get done. When and if it is finished, then new proposals will be subject to it, but until that time, the existing rules must be used.

Chairman Carey stated that from a legal point of view, the Board only needs to take into consideration what is happening on one side of the proposal.

Colleen Dowdall stated she is saying to forget the density designation. The 2 per 1 density designation was made because State law used to be that only 1/2 acre was needed for a septic system. It is a totally invalid density designation. 2 per acre could not be done unless public sewer was brought in. The density is not the issue. The issue is the reason for the designation. There is no 1 per 1 designation in the Comp Plan. That is how insignificant the density designations are. It is up to 1 per 5, it cannot be looked at as a zoning line. She did not like to use the neighboring properties either in terms of deciding the density designation and has told the planners she is uncomfortable with that. In this case, there is a line that fronts on this property with different designation on either side and those designations are very similar in terms of looking at the plan for scope and purpose. Ron Ewart's evaluation shows there is very little difference. There is no reason for that line to exist in that particular place if the goals of the plan are looked at.

Commissioner Kennedy stated he disagreed with that statement because the Comp Plan line and the easterly border coincide and he is saying that is not an accidental coincidence. When the Comp Plan was written it was written with that in mind, that location was not a gray line, it was a black line. He believed that in this case, it is different than no zoning. He did not feel that the finding could be made of substantial Comprehensive Plan compliance.

Kimberly Jakubowski stated Mr. Ewart's analysis is more of an interpretation swayed toward the interest of his client. She also did not find where Woodman School District was contacted regarding this subdivision, again setting a precedent to move the line. How will Woodman School be able to handle the increase in student body. It is a small school with limited resources. She was concerned about that impact as well.

Colleen Dowdall stated State law prohibits turning down a subdivision based upon the impact of the schools.

Ron Ewart stated he did send notice to Woodman School and the school district. He received a letter from Rachel Vielleux who stated she had no comment. He felt his analysis took an objective viewpoint. The Comp Plan map states the "designation are approximate and any decisions based on them should reflect site specific conditions and pertinent documents." The dividing line between the 2 per acre and the 1 per 5 designations is the east property boundary of this subdivision and the west line of Happy Hollow Lot 1, therefore making the line an approximation based on a subdivision present before the 1975 plan. A site analysis will show evidence the property would support this proposal at least to the same degree as other similar sized lots in the area. The purpose statement of the land use designation is that it should reflect site specific conditions and other pertinent documents, including the Missoula County Subdivision Regulations. This proposal meets all those review criteria. The Health Department and DEQ will also review it in depth for sanitation and water supply. The Comp Plan does consider the line approximate and site specific analysis and pertinent documents must be applied.

Colleen Dowdall stated that is the basis she uses to advise the planners to not look strictly at density designation but to look at the underlying reason for the designation. The map says there are not black line, they are gray lines. If there is a line, the underlying reason needs to be looked at and an analysis made as to whether that applies on the ground. That is simply the law of interpretation of the Comprehensive Plan when it comes to subdivisions.

Jennie Dixon stated she did speak to Tim Hall and the draft plan for the Lolo area is a regional plan that would extend the planning area up Highway 12 to the pass. There is no anticipation to change the land use designations from the 1975 plan as far as use or density recommendations. He also recognizes the Mill Creek/Thayer Road area does have a carrying capacity that will be looked at for future development proposals. There has been some public investment in terms of the bridge that might warrant some level of development and thus the reason for supporting this subdivision. She stated that staff does struggle with these proposals and felt further discussion between staff, the Commissioners and counsel might be warranted.

Commissioner Kennedy stated such discussion is indicated. For him, the next question still remains as to what happens when the next proposal to the west comes in, and then the next, and then the next. There is a carrying capacity but it has not been well defined. Some has been defined through zoning. There is nothing that tells how to deal with further development to the west. He felt this will establish a precedent by stating the line that exists, that he feels is a black line, is in fact a gray line. It will invite additional development proposals to the west. For those reasons he cannot support this proposal.

Colleen Dowdall stated that when additional proposals to the west come in, the same analysis will be done to determine if that land was designated 1 per 5 as opposed to 2 per 1 for some reason that exists on the ground. When a natural boundary is reached that shows the designation that exists can't also apply to the 2 per acre, it will stop. The map says this is a gray line. Planners on other subdivisions coming up with difficult Comp Plan issues raise the issue that the area will quadruple in size. However, her view is that a decision cannot be made for an individual landowner based on what someone might bring in tomorrow or 20 years from now. That is not part of the review criteria.

Commissioner Evans stated the writers of the Comp Plan 25 years ago did not have a crystal ball. All the lines on the maps are approximations based on their knowledge and perception 25 years ago. That argument would not hold up in court.

Kimberly Jakubowski stated when she purchased the land she knew this density designation existed and she knew she would not have the opportunity, if she chose, to subdivide her land 25 years from now. That was a strong positive for her and a negative for other potential buyers. To know your land will remain as open space is a good thing, not a negative thing.

Commissioner Evans stated she did not consider it a negative nor was it hard and fast and unchangeable.

Chairman Carey stated he felt in this particular case the State has tied their hands. He did not see how legally this could be denied. He felt this would continue until the entire County was divided into 1 or 2 per acre. The tools to prevent that don't currently exist.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision; and approve the variance request from Article 3-2(3) of the Missoula County Subdivision Regulations for the public road to vary from the required 24 foot pavement width to the existing 20 foot width, both based on the findings of fact set forth in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve Loloview Acres No. 2, Lot 5 Subdivision, based on the findings of fact in the staff report and subject to the reviewed conditions as presented today. Chairman Carey seconded the motion.

Commissioner Kennedy stated he appreciated Chairman Carey's comment that the state has tied their hands, however, the Board still sits in judgment to make a decision as to whether or not it is their belief that these subdivisions comply with the various regulations and plans they have. He could not come to that conclusion. He felt, as a responsible Commissioner, in making that judgment he would not blame the state or say the state is a default decider of this issue. He felt it was a Comp Plan issue they could decide and was disappointed with the Board's decision.

The motion carried on a vote of 2-1, Commissioner Kennedy opposed.

Loloview Acres No. 2, Lot 5 Subdivision Conditions of Approval:

1. The statement on the plat waiving the right to protest an RSID/SID shall be revised to read as follows:

"Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for improvements to Thayer Road and Mill Creek Road, including dust abatement, and pedestrian walkways and bikeways, based on benefit, which may be used in lieu of their signatures on an RSID/SID petition. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land depicted herein." *Subdivision Regulations Article 3-2, County Surveyor and City-County Health Department recommendation.*

2. Article 1(2A) of the proposed covenants shall be revised to require a 50-foot building setback only from the side and rear property boundary lines. *Subdivision Regulations Article 3-1(5) and OPG recommendation.*

3. Article II(2) of the proposed covenants shall be revised so that the second sentence reads:

"No covenants or sections thereof relating to wildlife, fire standards, weed control, building setbacks, no build zone or land use may be changed without prior written consent of the governing body." *Subdivision Regulations Articles 1-3, 3-1(1), 3-1(2), 3-2(6) and OPG recommendation.*

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

There being no further business to come before the Board, the Commissioners were in recess at 2:55 p.m.

THURSDAY, FEBRUARY 3, 2000

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.

Monthly Reports -- Chairman Carey examined, approved and ordered filed the Monthly Report for Justice Court 1, John Odlin; for Justice Court 2, Karen Orzech, and for the Clerk of the District Court, Kathleen Breuer, for the month ending January 31, 2000.

ADMINISTRATIVE MEETING

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

Tax Refund Request - The Commissioners approved a Tax Refund Request for Patricia Moran of Missoula in the amount of \$31.70. The document was returned to Vickie Zeier for further handling.

MR TMA Request - The Commissioners approved a Missoula Ravalli Transportation Management Association (MR TMA) request for \$10,000.00 of County Program Income funds to be used for Disabled Bus Service.

Extension Request - The Commissioners signed an Extension Request for a 12-month extension of the final plat approval deadline for Rolling Hills Subdivision, in accordance with the recommendation of the Office of Planning and Grants. The new deadline will be February 26, 2001.

Other items included:

- 1) The Commissioners discussed the Lolo Lakeside Levy.

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

FRIDAY, FEBRUARY 4, 2000

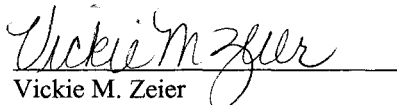
The Board of County Commissioners met in regular session; all three members were present.

Claims List -- Commissioners Carey and Kennedy signed the Claims List, dated February 3, 2000, batch numbers 463, 466, 467, 468, 469, 470 and 471, with a grand total of \$290, 175.12. The Claims List was returned to the Accounting Department.

Claims Lists -- The Commissioners signed the Claims Lists, both dated February 4, 2000, batch numbers 473, 474 and 475, with a grand total of \$83,006.32 and batch number 476, with a grand total of \$111,563.69. The Claims Lists were returned to the Accounting Department.

Indemnity Bond -- Chair Carey examined, approved, and ordered filed an Indemnity Bond naming Montana School Group Work Comp as principal for Warrant #20114 issued January 13, 2000 on the Missoula County Claims (87) Fund in the amount of \$81,151.73 now unable to be found.

Addendum: Acting Chairman Evans signed an Addendum to a Buy/Sell Agreement dated November 9, 1999 for a 60-day extension from the original contracted dates between Missoula County Airport Development Park (Seller) and Donald V. Snaveley (Buyer) for the property located at Lot 4, Block 2, Missoula County Development Park, Amended. The document was returned to Barb Martens in the Project's Office for further handling.


Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chairman
Board of County Commissioners

MONDAY, FEBRUARY 7, 2000

The Board of County Commissioners did not meet in regular session. Commissioners Carey and Kennedy were in Great Falls from the 7th to the 9th of February attending the MACo Midwinter Meeting and the Governor's Conference on Disaster Preparedness.

Indemnity Bond -- Acting Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming The Tutskey Group as principal for Warrant #54334 issued December 10, 1999 on the Missoula County Urban Transportation Fund in the amount of \$297.50 now unable to be found.

TUESDAY, FEBRUARY 8, 2000

The Board of County Commissioners did not meet in regular session.

WEDNESDAY, FEBRUARY 9, 2000

The Board of County Commissioners did not meet in regular session.

The Weekly Public Meeting scheduled for this date was cancelled as two of the Commissioners were out of town.

THURSDAY, FEBRUARY 10, 2000

The Board of County Commissioners met in regular session; a quorum of members was present in the forenoon. Commissioner Carey was in Great Falls February 10th and 11th attending the Elected Officials Workshop in conjunction with the MACo meetings. Commissioner Evans gave a presentation at Leadership Missoula in the afternoon, and Commissioner Kennedy was out of the office all afternoon.

Claims Lists -- Commissioners Evans and Kennedy signed the Claims Lists, dated February 8, 2000, batch numbers 477 and 478, with a grand total of \$111,592.11, and dated February 9, 2000, batch numbers 479 and 482, with a grand total of \$51,109.81. The Claims Lists were returned to the Accounting Department.

Monthly Report -- Chairman Carey examined, approved and ordered filed the Monthly Report for the Report of the Sheriff, Douglas Chase, for the month ending January 31, 2000.

FRIDAY, FEBRUARY 11, 2000

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

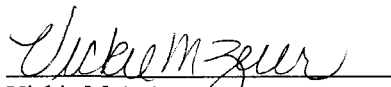
Indemnity Bond -- Chair Carey examined, approved, and ordered filed an Indemnity Bond naming Variable Annuity Life Insurance Company as principal for Warrant #353044 issued September 9, 1999 on the Missoula County Payroll Fund in the amount of \$12,695.26 now unable to be found.

Indemnity Bond -- Chair Carey examined, approved, and ordered filed an Indemnity Bond naming Variable Annuity Life Insurance Company as principal for Warrant #353736 issued September 29, 1999 on the Missoula County Payroll Fund in the amount of \$12,785.26 now unable to be found.



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Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chairman
Board of County Commissioners

MONDAY, FEBRUARY 14, 2000

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

Contract - Chairman Carey signed a Contract between the Montana State Department of Public Health and Human Services and the Missoula City/County Health Department for delivery services to eligible low-income participants. The term will be January 1, 2000 through December 31, 2000. The total amount shall be \$42,976.00. The document was returned to Health Department for further handling.

Agreement - Chairman Carey signed an Agreement with Montana State University Extension Service to pay the entire monthly salary for Missoula County Extension Agent, Alice Daily, and to bill Missoula County for the county share of salary. The document was forwarded to M.S.U. Personnel Section in Bozeman, Montana.

Contract Addendum - The Commissioners signed a Contract Addendum with Elizabeth Rantz, MD for services as Medical Director of the Missoula County Detention Facility, with a new hourly rate of \$60.00 being retroactive to December 1, 1999.

Resolution - The Commissioners signed Resolution No. 2000-015 resolving that the E1/2, NW1/4 and the W1/2, NW1/4 of Section 34, T 11 N, R 20 W, located in Missoula County (West Carlton Creek Road area) be included within the Florence Rural Fire District, and are to be assessed for annexation a fire district levy along with other property already a part of Frenchtown Rural Fire District.

TUESDAY, FEBRUARY 15, 2000

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, Commissioners Carey and Kennedy participated in a tour of the historic Traveler's Rest Area near Lolo.

ADMINISTRATIVE MEETING

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

Amendments - The Commissioners signed six Amendments with the effective date of July 1, 2000 as follows:

1. For Medical Plan, nutritional counseling for weight reduction or treatment of obesity is covered, subject to the provisions of the Plan applicable to nutritional counseling. The effective date will be July 1, 2000.
2. For Medical Plan, physical therapy is covered up to \$2,000.00 maximum benefit payable per person each benefit year. The effective date will be July 1, 2000.
3. For Medical Plan, durable medical equipment is covered up to \$15,000.00 maximum benefit payable per person each benefit year.
4. For Medical Plan, massage therapy is covered under alternative medicine, subject to the provisions of the plan applicable to alternative medicine.
5. For Dental Plan, the maximum benefit payable for covered expenses in each benefit year is \$1,200.00 per person.
6. For Dental Plan, the maximum lifetime benefit payable for covered expenses related to orthodontia is \$1,700.00 per person.

Resolution - The Commissioners signed Resolution No. 2000-016 transferring kitchen equipment to Swan Valley Elementary School and approving a letter to Dr. Gray in reference to the request for kitchen equipment.

Contract for Services - The Commissioners signed a Contract for Services with Michael J. Scolatti to provide twenty-four hours per week of treatment/intervention services to inmates convicted of sexual offenses and confined at the Missoula Regional Prison. The total amount shall not exceed \$49,920.00. The term will be November 15, 1999 through June 30, 2001.

Request for Action - The Commissioners approved a Request for Action as per the County Attorney's recommendations to offer A.D.G. a flat fee of \$30,000.00 to extend Contract for Architectural Services two months beyond the contract ending date of November 8, 1999.

Request for Action - The Commissioners signed Submittal Letters and Signature Pages for three Crime Victim Assistance Programs (City Attorney CVA, County Attorney CVA and Rural Outreach CVA in Seeley-Condon, Montana).

Addendum - The Commissioners approved an addendum for a 60-day extension of all dates on the Buy/Sell Agreement for Lot 4, Block 2 in the Missoula Development Park (Donald Snaveley - buyer).

Other items included:

- 1) The Commissioners discussed the following items:
 1. A budget transfer - Road Department Personnel.
 2. The Lolo Levee and Mullan Trail update.

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

WEDNESDAY, FEBRUARY 16, 2000

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

Claims List -- Commissioners Evans and Kennedy signed the Claims List, dated February 15, 2000, batch numbers 486, 490, 491 and 492, with a grand total of \$63,266.11. The Claims List was returned to the Accounting Department.

PUBLIC MEETING – February 16, 2000

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

Public Comment

None

Routine Administrative Actions

Commissioner Kennedy moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$63,266.11. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Decision: Request to Vacate a Portion of Clearwater Short Line Railroad Right-of-Way (Highway 12 West – Lolo) (Postponed from February 2, 2000)

This is a petition to abandon "portions of the former Clearwater Short Line Railroad Company right-of-way along Lolo Creek in Section 36, Township 12 North, Range 22 West in Missoula County, Montana."

The reasons for the request are as follows:

1. The Clearwater right-of-way only duplicates the route of U.S. Highway 12 in Section 36, and the Clearwater right-of-way is in the same location as U.S. Highway 12 at both the east and west sides of the Section.
2. As required by MCA 7-14-2615(3) and (4), the Clearwater right-of-way does not provide access to any public land or private land which cannot also be accessed by U.S. Highway 12, with the exception of the land owned by Amidnamin Manoocheche (Mike Amidi), which has other sources of legal access.
3. The abandonment of the Clearwater right-of-way will help the landowners along the right-of-way remove a cloud from title to their properties.

The following landowners have been notified:

Charles T. & Kimberly A. Satterlee, Ivy Family Living Trust, Gary R. & Dorothy M. Cooper, Ronald S. & Janice Henderson, Debra Bowey, Potomac Corp., Amidnamin Manoocheche, Willard N. Morgan, State of Montana, Bob Storer, The Burlington Northern and Santa Fe Railroad Company.

Chairman Carey reopened the public hearing.

Peter Dayton, Worden, Thane & Haines, stated his recent letter expressed some concern about just retaining a portion of the highway right-of-way. It could create considerable confusion because of the way the two rights-of-way overlap and diverge. He suggested it would be desirable to prepare a map if the Board plans to grant the Montana Department of Transportation's (MDT) request. MDT has agreed to prepare such a map. There are also some landowners present who are opposed to granting the request to MDT.

Commissioner Evans stated she did not want to proceed with this request until there was more input from the Highway Department.

Dick Chrest, MDT, stated they would like to retain a minimum of 80 feet on each side of the centerline where the Clearwater right-of-way is adjacent to the highway. The minimum standard width for highway design is 160 feet. Since it is already in public ownership, they would not want to lose it while they have the chance to obtain it. If it is ever decided to widen the highway and the right-of-way is not obtained now, they would have to buy it at a later date. The MDT would be willing to do whatever surveys are required to show where the rights-of-way are located.

Commissioner Kennedy asked Mr. Chrest what the right-of-way width was for the balance of the road?

Dick Chrest stated it varies in width from 100 feet to over 200 feet. He did not know the average width, but a lot of it is 100 feet.

Commissioner Kennedy asked if there was a use for the additional right-of-way in this particular location?

Dick Chrest stated that until a highway is designed, he would not have a true answer for that. That is why they would like the minimum of 80 feet so it could be designed.

Commissioner Kennedy asked if MDT has any plans to widen the roadway that would require this additional right-of-way width?

Dick Chrest stated the MDT has no plans at this time, but with the changing population, there could be in the future.



Commissioner Evans stated she would like to postpone the decision and asked Mr. Chrest how much time MDT would need to prepare the necessary documents.

Dick Chrest stated they would need to establish where the railroad right-of-way is and where it is adjacent to the highway right-of-way.

Peter Dayton stated WGM prepared a map for the two sections where the Clearwater right-of-way was previously abandoned. That was based on the original railroad surveys which were very accurate. Any surveyor could locate that railroad right-of-way accurately.

Commissioner Evans asked if two weeks would give MDT sufficient time.

Dick Chrest stated that would not be enough time.

Chairman Carey asked Mr. Dayton if there was any urgency on his part?

Peter Dayton stated there was no transaction pending on this petition. To wait a couple of months for a survey would not be a problem.

Commissioner Evans asked Mr. Chrest to speed the process as much as possible.

Michael Sehestedt stated a time certain should be set or this could go on indefinitely.

Commissioner Evans moved that the Board of County Commissioners postpone action on this petition until April 12, 2000 to allow MDT to prepare the necessary documents and submit them to the Commissioners prior to that time.

Michael Sehestedt clarified that this request is to retain 30 feet of the Clearwater Short Line easement, bringing the highway right-of-way up to the minimum of 80 feet on each side of the centerline, where the right-of-way is immediately adjacent to the existing highway right-of-way. The 30 feet would not be retained through the entire length of this section. There are many places where the Clearwater right-of-way is not adjacent to the highway.

Commissioner Evans stated her reason for granting this request to the MDT is that current minimum right-of-way width is 160 feet. Also, when the County needs something from MDT, they are always willing to listen and respond if possible and she would like to extend the same courtesy back to them.

Commissioner Kennedy seconded the motion. There were other issues about this petition that have been cleared. One was to retain the right-of-way for a trail or other transportation uses, however a GLO right-of-way still exists to the west to be used for that purpose. The only remaining issue is whether or not the additional right-of-way should be granted to MDT.

Horace Brown stated there was one person who did not have direct access onto the highway and would like to hear publicly how that situation was resolved.

Peter Dayton stated all of the landowners but one have the highway immediately adjacent to or running through their property. The exception is Mike Amidi. The highway curves to the south of his property and in order to get from the highway right-of-way to his property, he has to go across a couple feet of State of Montana land. The Clearwater Short Line right-of-way goes through his property so he had access along that. If it is abandoned, he won't have that access. After speaking with him several times, he is not concerned because he still has legal access and does not anticipate any problems with the State of Montana. Mr. Amidi is fully aware of the situation and has signed the petition.

Horace Brown stated he had a problem with taking access away from someone who currently has it. He felt a right-of-way for Mr. Amidi could be left so he could access directly on the highway.

Peter Dayton stated there was a possibility that access would be there when the right-of-way to MDT was granted. That question would be answered when the survey was completed.

Commissioner Kennedy stated a written statement from Mr. Amidi might satisfy everyone.

Peter Dayton stated he would ask Mr. Amidi for a letter. Mr. Amidi had also signed the petition which is an indication of his approval.

Chairman Carey stated a motion had been made and seconded to continue this hearing to April 12, 2000, pending further information from the Montana Department of Transportation. He called for a vote on the motion.

The motion carried on a vote of 3-0.

Hearing: Request to Vacate a Public Access in Ibey Acres (off Mount Avenue)

This is a petition to abandon "The public access from the north end of Lots 2 and 3 to the south end of Lots 2 and 3 of Ibey Acres located in the SW 1/4 of Section 25, Township 13 North, Range 20 West, in Missoula County, Montana."

The reasons for the request are as follows:

1. There is no access to or from the road that is public; therefore, the City/County has no access from which to maintain it.
2. It would entail hardship upon the landowners on either side of the property if a roadway were brought through to meet up with this easement.

The following landowners have been notified: Timothy E. Ibey, Charles Ibey, Gordon & Geniece Jensen, Chris Deschamps, JoAnn Kidder Trustee, Katherin L. Markette.

Chairman Carey opened the public hearing.

Charles Ibey stated he was one of the owners of the property. The property is located off of 37th Avenue where Mount Avenue begins again, toward Clements Road. When he did his subdivision, a condition of approval was to have a 60 foot wide public access easement. If this easement was ever developed into a road, it would run close to or take out several existing houses and outbuildings. The signatures on the petition are from the people who live right around the area. There is also a well that has been located just inside this easement.

Commissioner Evans stated this was a condition of approval of a previous subdivision and what was being requested today was to vacate that requirement.

Charles Ibey stated that was correct.

Shirley Deschamps stated she lived on the property just west of where this easement is. If this road were ever put in, it would be within 10 feet of her bedroom and would take out her garage. It would be a very expensive situation.

Jill Evans Todd, Environmental Health Division, City-County Health Department, stated the department is in support of this request but would recommend certain conditions be imposed. On August 26, 1999, the Health Department delivered a notice of violation and order to take corrective action to the Ibeys for the improper placement of the well. This affected the approved septic system location and the septic permit was invalidated. The well is within the public access easement and it does terminate below the ground surface which is contrary to DNRC and subdivision requirements. The Ibeys have contacted a consultant to begin the process of getting a new drainfield site approved but this will require that a new certificate of plat approval be issued and the lot will need to go through another sanitary review. Because Lot 2 in its current state is not approval for a residence, the Health Department recommends that conditions be imposed if the request to vacate the public access is granted. The conditions recommended are: 1) That a revised certificate of plat approval be obtained showing accurate well, drainfield and irrigation ditch locations; 2) all subdivision conditions must be complied with including proper well construction; and 3) the owner must obtain a septic permit and install the septic system in the approved location before occupancy of the house.

Commissioner Evans asked for a clarification of the Health Department requirements. This has already gone through subdivision review and the road easement was required. Now they are asking that the road easement not be required.

Michael Sehestedt stated that when this was reviewed and sanitary restrictions were lifted, the plan showed an area of locations for a well and drainfield. The well however has been drilled too close to the approved drainfield location on the property. The owner could abandon the well and drill a new one in the proper location. However, the owner is going through the process of getting approval for a different drainfield location that will make the well acceptable in its current location.

Charles Ibey stated the way his house sits in regards to the easement, there wouldn't be room for a drainfield. He is currently talking with Eli & Associates to locate his drainfield in a different location. The new location is within requirements for distance from existing wells, other drainfields and irrigation ditches.

Colleen Dowdall stated that OPG wanted to have some input prior to the Commissioners making their decision. They would have that opportunity at the next meeting on this action. A site inspection needs to be completed prior to the decision.

Commissioner Evans asked if OPG was prepared to give their comments today.

Jennie Dixon indicated they were not prepared at this time.

Chairman Carey stated that it would be better for all parties to postpone the hearing for two weeks. A site inspection will be scheduled and this matter will come before the Board again on March 1, 2000.

Consideration: Maus Acres (2 lot Subdivision of 10.12 acres) – Twin Lakes Area off Houle Creek Road near Frenchtown

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

This is a request from Ron and Barbara Maus, represented by Eli and Associates, to divide a 10.12 acre parcel into two lots, each approximately five acres in size. Proposed Lot 1, the northerly lot, is currently vacant and is proposed for a single residential unit. Proposed Lot 2 is the site of the Maus residence. The property is located northwest of Frenchtown and north of Houle Creek Road in the Twin Lakes development. It is accessed off Pond Road, via Houle Creek Road.

The Twin Lakes development was created through a Certificate of Survey process in 1973. Most of the original lots were 10 or more acres in size. The subject property is primarily forested with Ponderosa Pine and Douglas Fir and it slopes downward at an average of 11 percent grade from the northern end of the property and levels off towards the south. The original COS plat shows a natural lake located at the southwest edge of the property. This lake is no longer present, though the area serves to collect surface runoff.

The property is unzoned. Surrounding land uses are primarily single family residential. The 1975 Missoula County Comprehensive Plan designates the subject property Rural Low Density land use with a recommended maximum density of one dwelling unit per 10 acres. Land surrounding the Twin Lakes development to the north, west and east is designated Open and Resource land with a residential density designation of one dwelling unit per 40 acres. Land to the south of Twin Lakes is designated for Rural Low Density residential development, with a maximum density of one dwelling unit per ten acres.

During pre-application meetings with Ron Ewart of Eli & Associates, OPG staff raised concerns about the proposed density of the subdivision and its compliance with the Comprehensive Plan density recommendation and goals/policies. During project review, OPG staff concluded that the subdivision is not in substantial compliance with the goals and policies nor the Rural Low Density designation of the Comprehensive Plan.

The applicant has submitted a subdivision application that has not been found to be in substantial compliance with the Comprehensive Plan and staff does not recommend approval of the subdivision.

The key issues on this proposal focus on three things: Comprehensive Plan compliance, effect on local services (roads, fire, distance to and costs of providing services) and natural environment.

The property is located near the edge of the Rural Low Density recommendation and borders on Open and Resource land which has a density recommendation of 1 unit per 40 acres. The Open and Resource land designation also surrounds the entire Twin Lakes development, to the east, north and west. The designation to the south is 1 unit per 10 acres.

As proposed the subdivision would be considered Rural Medium Density according to the 1975 Plan. The key difference between the Rural Low and Rural Medium Density designations is the extent to which resources and natural environment are protected and the impact on costs of providing services. Rural Low Density offers the maximum protection of residential areas with environmental factors that exist on this property such as slope, timber, wildlife habitat and location within the Wildland/Residential interface.

This area is also some distance from the Huson and Frenchtown Activity Centers which serve as the base for service provision.

In order to bring the plan into more substantial compliance with the Comprehensive Plan the applicant has proposed amendments to the covenants. Staff does not consider these mitigation measures to be sufficient. Staff finds the proposal is not consistent with the recommended density of the Rural Low Density designation nor is it in substantial compliance with the applicable goals and policies regarding land use, transportation, open space and County facilities; and the area specific goals in the 1975 Plan.

Houle Creek Road is a County maintained road. Twin Lakes Road and Pond Road are both private roads maintained by the Twin Lakes Homeowners Association. Houle Creek Road meets County road standards for width, however the Surveyor has stated it should be paved and Frenchtown Rural Fire District has noted there may be some problems with road grade and maintenance.

Direct access to the property is from Pond Road, a gravel road which does not meet County standards for surface width and cul-de-sac length. Pond Road has several hairpin turns and one is located adjacent to the property at the point where a proposed driveway for Lot 1 is located.

The subdivision is part of the Frenchtown Rural Fire District and the nearest fire station is over 5 miles from the subdivision. Scott Waldron stated that Houle Creek Road can be problematic when not maintained and expressed some concern about residential development within the Wildland/Residential Interface. He also did state that the fire department would provide fire services to the best of their ability.

Staff has concluded that protection of natural environment is accomplished through the Rural Low Density level of development. Because staff is not recommending approval, the variance criteria for the three variance requests have not been addressed in the staff report.

Ron Ewart, Eli & Associates, developer's representative, was present, as was Ron Maus. He thanked Karen McElroy for her work on this proposal. They are, however, in disagreement with the findings of fact in the staff report and the recommendation of denial. A lot of work and money has gone into this proposal. It is very important to Ron and Barbara Maus. He presented some suggested Conditions of Approval for this subdivision. In other cases, even when a proposal was recommended for denial, conditions were still prepared. The Maus' have lived on the property for over 10 years and have been good stewards of the land. Their dream is to build a new home on Lot 1 and need approval of this subdivision to be able to afford that. It would result in only one new residence. Twin Lakes is a single family residential community which encompasses all of Section 17, T15N, R22W. It started in 1973 with 10+ acre lots. Today there are 60+ lots in Twin Lakes, about half of which are 5 acres in size. This proposal would not be a departure from the existing character of the area. There are other residential communities similar to Twin Lakes to the east and west. Several are 5 acre tracts which have been created through subdivision review. To the north and east are forest service lands. Twin Lakes has existing covenants and a homeowners association, which collects assessments and maintains roads within the community. The covenants, which were filed prior to adoption of the 1975 plan, allow lots to be divided to 5 acres in size. Additional covenants for this subdivision will also be filed related to land use, building type, nuisances, property maintenance, driveway maintenance, weed control and revegetation, wildlife standards and fire protection standards.

He explained how this subdivision complies with the primary criteria outlined in state law. There would be no effect on agriculture and agricultural water user facilities as this has never been agricultural land. Houle Creek Road is a graveled, County-maintained road and these lots will waive the right to protest an RSID for improvements to the road, including paving. Pond Road is maintained by the Homeowners Association. The driveway for the new lot is at the apex of the curve where site distance is optimal. Utility easements already exist to serve the new home. Emergency services are provided by Missoula County Sheriff's Department and Frenchtown Rural Fire. Frenchtown Elementary and High School have room for new students. A school bus stop and clustered mailboxes are near the entrance to Twin Lakes. Frenchtown is only 5-1/2 miles away, where community services are available. Missoula is only about an additional 10 minute drive east on I-90. The property is wooded, well maintained and has a slope of 11% to 13% at the most. There are no problematic soils for one septic system on 5 acres and there is an adequate and safe ground water supply. The Health Department states this proposal for 2 dwellings on 10.12 acres should have minimal impact on water quality. There are no ground water issues, no drainage issues, no wetland or riparian areas, no steep slopes or other sensitive environmental conditions. The surrounding area is forested and provides good cover for wildlife and is not within big game winter range, nor are there any areas of particularly important wildlife habitat on the

property. The proposal is in an area where people, roads and buildings have existed for many years, therefore impacts to wildlife have already occurred. The covenants will educate residents on ways to mitigate the occurrence of conflicts with wildlife. There is always at least one sheriff's deputy in this zone and a deputy lives next door to this proposal. The property is 5-1/2 miles from Frenchtown where fire and emergency medical teams are prepared to respond to calls. An emergency vehicle could make it to this property from Frenchtown in less than 10 minutes averaging only 35 miles per hour. This proposal meets each and every subdivision review criteria. The goals and objections of the 1975 Comprehensive Plan which are applicable to this proposal are either met or not counter to this proposal. Five acre lots are what many people in the area desire. The properties of the general vicinity are of varying sizes and many of them, about half of Twin Lakes, are about 5 acres in size as allowed by the covenants. The president and secretary of the Twin Lakes Homeowners Association have voiced approval of this proposal. There is a certain anticipation of many of the developments in this area that lots may be 5 acres in size. The proposal would compliment the semi-rural nature of the area and would be in keeping with the existing character and community expectations. Impacts have already occurred in the area and to allow one more home would add very incremental impacts only. There would be no continuation of settlement into undeveloped, non-residential areas where services and utilities are not available. There are forested and mountainous public lands adjacent to this community which provide perpetual open space.

He responded to each of staff's conclusions of law regarding compliance with the goals and policies of the Comprehensive Plan. Twin Lakes has been an established community since 1973 and has not expanded outside its boundaries. The density is expected and logical. The development could benefit Frenchtown as it is the nearest city. Environmental quality will be maintained. Utilities exist next to the property and can easily serve the home. It is already within the jurisdiction of school, fire, medical and law enforcement services. Lot owners pay an assessment to the Homeowners Association for road maintenance. Houle Creek Road is County maintained and these lots will waive the right to protest improvements including paving. Low density is a relative term. Clustering is also a relative term. The people in Twin Lakes feel the density of 1 unit per 5 acres is fine. The rural ethic and character will be maintained. The people who live there expect 5 acre lots. There are no significant constraints on timber resources with this property. A few trees will be removed but new ones will be planted in the right places. It is not considered important wildlife habitat and the covenants provide resources to educate owners on living with wildlife. The slope of the property ranges from flat to 13%. There are no critical natural areas on the property. Pond Road is in good condition, it is not steep, it has good gravel and good shoulders and is well maintained. Adjacent to the property the road is 24 feet in width. Most of the roads in this area dead end near the edge of the section close to forest land. Pond Road is an existing off site road and adequate for the amount of traffic it receives. This development is only 5-1/2 miles from Frenchtown, less than a 10 minute drive. There has been quite a bit of development outside the Frenchtown and Huson activity circles during the last 25 years. There have been many 5 acre lots created at similar distances.

The report states this proposal cannot be found to be in substantial compliance with the 1975 Comprehensive Plan. In actuality, the proposal is in substantial compliance with the plan for the reasons he has enumerated. He felt there were no good reasons presented to deny this subdivision, whether having to do with the Subdivision Review Criteria or Comprehensive Plan compliance. This area already has other 5 acre lots and the covenants have allowed 5 acre lots since before the 1975 plan was adopted. The same concept of 5 acre lots in a rural environment is found in other locations. There have been many subdivisions, not just family transfers, that have created 5 acre lots in the Ninemile, Sixmile, Elk Meadows and Sorrel Springs developments, where conditions are similar. This is the first time a denial was recommended in this type of situation. He firmly believes in comprehensive planning and also firmly believes this proposal is in substantial compliance with the 1975 Comprehensive Plan. The plan was adopted 25 years ago to be a flexible guideline in need of updating within a few years. Change has occurred and should be taken into account.

This is important to Ron and Barbara Maus. They entered into this process in good faith. They cannot understand how this can be denied when all around them other 5 acre lots have been created through the family transfer process. No agencies have identified a problem with the proposal. There is no legitimate reason to deny this subdivision.

Chairman Carey asked for public comment.

Ron Maus stated that a 3 lot subdivision was just created at the top of Houle Creek Road and two of those lots are 4.83 acres in size. He felt his subdivision fit in with the area.

Scott Waldron, Fire Chief, Frenchtown Rural Fire District, stated there is always a concern with Houle Creek Road and the fact that it is not paved. He was also concerned about the mixed signals being given to property owners in the subdivision review process. He is a resident of the area and next to him there are two mobile homes on 5 acres. Infill is wanted but when people try to do that, they are told they cannot. In most cases people don't do much with 10 acres because it is more than they can manage. Smaller tracts tend to be cleaner because they can be managed better. Things are being done differently week to week and that concerns him. Something is broken and it needs to be fixed.

There was no further public comment.

Commissioner Evans asked if staff could get findings of fact ready for this proposal quickly?

Jennie Dixon stated that could be done.

Commissioner Evans stated there is another subdivision being heard today that is very much the same as this one and has been recommended for approval. Much of the situations are the same. There is very little slope to the land, there are no drainage issues, there are no ground water issues, there are no riparian or sensitive areas, it is a private gravel road that is maintained by the Homeowners Association. The timber and habitat have been adequately addressed. The build up around this proposal is significant. There are 69 lots in this area. She asked that the map of the area be added to the record. It was inconceivable to her to turn down this request for one additional house. She also pointed out that the law in regards to the Comprehensive Plan suggests that provisions must be made for continual update and redefinition of the goals and objective to be undertaken at least every 5 years, and should include a re-examination of the major elements such as land use, population, economy and social data. There hasn't been an update since 1975. Things change over the years. To look at the growth that has occurred in the area and say no to this proposal is an invitation for people to reject subdivision review and do land division through the COS process. She did not want to



see that happen. Houle Creek Road has been a problem for over 20 years because of the COS process. The waiver of protest to fix Houle Creek Road is a critical issue. To turn down this subdivision is unconscionable and would not stand up in court. She would like findings of fact for approval be prepared.

Jennie Dixon stated in order for the Commissioners to approve the subdivision, staff would need to rewrite findings of fact and write findings and conclusions for the variances and draft conditions of approval. Given that the 35 day deadline for this proposal is February 23, 2000, she asked this be continued until then so staff could draft findings based on the Commissioners recommendation for approval.

Commissioner Kennedy stated this is controversial with its recommendation for denial, which is a rare occurrence. Staff works hard with any proposal to try to find compliance with regulations, the zoning process and the Comprehensive Plan. He has no doubt that is what happened in this case. As hard as they might work, they could not reach that conclusion. That is important and telling as the history of OPG and planning staff is just the opposite. He heard lots of comments that there are other similar developments in the area so this one should be approved. One primary driver of Comprehensive Plan revisions is because existing planning and development happens in a way that is counter to the desires of the community. He also had a problem with the length of the cul-de-sac being over a mile long. He believed staff worked hard to reach this conclusion for denial and he agreed with it.

Commissioner Kennedy moved that the Board of County Commissioners support the recommendation of the staff for denial of Maus Acres Subdivision.

Commissioner Evans stated she would not second the motion.

Chairman Carey stated he could not second the motion.

Commissioner Evans moved that the Board of County Commissioners approve, contingent upon staff preparing conditions of approval and findings of fact and conclusions of law, a variance request for Pond Road to vary from the required 24 foot road width, a variance request for Pond Road to exceed the maximum cul-de-sac length of 1,000 feet, and a variance request to not provide sidewalks or pedestrian walkways in the subdivision. Chairman Carey seconded the motion.

Commissioner Kennedy stated it was unfortunate the variances were taken together as it would force him to vote against them even though he agrees with the variance requests for road width and walkways. He could not agree with the variance on the cul-de-sac length.

Commissioner Carey asked if that variance request could be separated.

Commissioner Evans stated the question of cul-de-sac length was separated from her motion.

Chairman Carey stated the motion before the Board was to approve the variance request for road width and pedestrian walkways. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the variance request for Pond Road to exceed the maximum cul-de-sac length of 1,000 feet.

Scott Waldron stated the turnaround at the end of Pond Road meets the requirements for the fire district.

Chairman Carey seconded the motion. The motion carried on a vote of 2-1. Commissioner Kennedy opposed.

Commissioner Evans moved that the Board of County Commissioners approve Maus Acres Summary Subdivision with the suggested conditions of approval as submitted by the developer's representative.

Jennie Dixon stated after brief review the suggested conditions look acceptable but she has not given any additional thought to other conditions that might be appropriate.

Chairman Carey seconded the motion. He stated it was a tough decision for him because he felt a strong plan was needed to guide growth sensibly. He believed staff worked hard and came up with a sound report but in this case it seemed if the Commissioners were to deny this new lot, adding one lot to the existing 69 lots, it would send the wrong signal to the public. In this case the right thing to do is to approve this subdivision with the conditions as suggested and reviewed by staff.

The motion carried on a vote of 2-1. Commissioner Kennedy opposed.

Colleen Dowdall stated this matter did not need to be continued. Staff needs to prepare findings and conclusions to support the Commissioners decision and support the conditions.

Maus Acres Summary Subdivision Suggested Conditions of Approval:

1. Grading and drainage plans shall be approved by the County Surveyor prior to final plat approval. *Subdivision Regulations 3-4.*
2. Driveway and emergency vehicle turnaround plans shall be approved by the Frenchtown Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-2(6)(E) and Frenchtown Fire District recommendation.*
3. The applicant shall contribute \$100 per new lot to the Frenchtown Rural Fire District, evidence of which shall be presented to the Office of Planning and Grants at the time of final plat approval. *Subdivision Regulations 3-7(2) and Frenchtown Fire District recommendation.*
4. A Revegetation Plan for Disturbed Sites shall be approved by the Missoula County Weed Board Supervisor prior to final plat approval and shall be contained within the subdivision covenants. *Subdivision Regulations 3-1(1)(B).*



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

"Acceptance of a deed for a lot within this subdivision shall constitute assent of the lot owner to waive the right to protest a future RSID/SID for a public water system for fire protection purposes, based on benefit. This waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land." *Subdivision Regulations 3-7(2).*

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

"Acceptance of a deed for a lot within this subdivision shall constitute assent of the lot owner to waive the right to protest a future RSID/SID for improvements to Houle Creek Road, including paving, based on benefit. This waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land." *Subdivision Regulations 3-2.*

Consideration: Scott Meadows (2 lot Subdivision of 10 acres) – Near Ravalli County Line

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

This is a request from Bruce and Gayle Scott, represented by Professional Consultants, Inc., to divide a 10 acre parcel into two lots, each five acres in size. The property is located approximately 400 feet north of the Ravalli County line on the west side of Old Highway 93. It is accessed by Polette Place, a private cul-de-sac road that divides the two proposed lots.

The subject property is primarily meadowland that slopes gently downward from west to east with a steep drop off about 300 feet east to Old Highway 93. The eastern half of proposed Lot D-1A has downward slopes with over 25 percent grade. In this area there is a section of seeps and springs that is identified as a riparian zone located approximately 60-90 feet west of Old Highway 93. The plat identifies this area as a no build zone, where buildings are prohibited.

The Scotts are building their home on proposed Lot D-1A, the eastern lot closest to the highway. Surrounding land uses are primarily single family residential. The property is unzoned. The 1975 Missoula County Comprehensive Plan designates Rural Low Density land use with a recommended maximum density of one dwelling unit per 10 acres. The subject property is also located approximately 400 feet south of the Carlton Activity Circle outlined in the 1975 Plan.

The proposed subdivision will be served by Montana Power. Sewer and water services will be provided by individual wells and septic systems.

There is one home under construction on proposed Lot D-1A, the eastern lot, and the western lot is vacant. This area was once used as agricultural land but was part of a larger land division for residential development. Although the proposal is not consistent with the recommended density, staff found it to be in substantial compliance with the goals of the Comprehensive Plan for the area due to its proximity to local services and the proposal of a no build area that would protect the critical natural area on the property.

The property is accessed by via Old Highway 93 to Polette Place, which is an existing private cul-de-sac road that currently divides the property. Adjacent to the property, Old Highway 93 has a 22 foot road width within an 80 to 90 foot right-of-way and does not meet County road standards for road surface width.

Polette Place has a 24 foot road surface width adjacent to the property within a 60 foot right-of-way. It is graded with borrow ditches to accommodate drainage. There is a road maintenance agreement included in the existing covenants. Polette Place extends over 1,800 feet from Old Highway 93 to the south end of the property. According to subdivision regulations this would require a variance from maximum cul-de-sac length of 1,000 feet. To mitigate the length of the cul-de-sac, the application states that lot owners will provide a hammerhead turnaround within the subdivision for emergency vehicles.

Subdivision regulations also require that all new subdivisions pave on site roads. A variance to this requirement has been requested. Staff has recommended a condition for an RSID waiver for future improvements to Old Highway 93.

During the Planning Status meeting, there were some potential changes to the conditions of approval, regarding the paving of Polette Place. That language is included in a separate memo accompanying this application. There are also some changes to Condition 6 regarding setbacks. Driveways range from 140 to 175 feet in length. Condition 2 requires rural fire district approval of driveway and turnaround plans. The third variance request is for pedestrian walkways. Staff is recommending approval of that variance request.

There is riparian habitat along the eastern edge of the property. The applicant has provided a riparian management plan which should be part of the covenants, with a drawing showing both the riparian and no build area. The proposed subdivision does provide habitat for white tail deer and changes to the covenants should be made to protect the wildlife.

Staff recommends approval of the three variance requests and approval of the subdivision with the revised conditions as presented.

John Kellogg, Professional Consultants Incorporated, developer's representative, was present, as was the applicant, Bruce Scott. He stated he appreciated the staff's work on the proposal. He presented a map showing which parcels in the area are party to the existing covenants and could be split to two 5 acre tracts. The development was laid out in anticipation of future lot splits. There is agreement with the weed control plan from the Weed Control Board. The developer is in agreement with the conditions as presented.

Chairman Carey asked for public comment.

Jim Decker stated he represented a group of people who live on land surrounding this property: Pat and Kelly Dotson, Tim and Pam Depute, Dale Hamilton, Dan and Cindy Sullivan, Steve and Stacy Dikeman, Dave and Cindy Kirby. They

have presented a petition of their concerns and have asked him to speak for them. Most of these people bought 10 acre tracts. It is true that this area was originally set up to be divided into five acre tracts, as a road runs through the middle of them. The folks he represents are concerned that the comprehensive plan recommends 1 unit per 10 acres and they would like to keep that rural density. Another concern is the traffic. There is a steep incline on the road and it has an erosion problem. These people request that the Comprehensive Plan density recommendation be maintained at 1 per 10. There are also irrigation ditches in the area that may cause problems with seepage.

Commissioner Kennedy asked John Kellogg what the grade on the road is?

John Kellogg stated it is close to 10%.

Commissioner Kennedy asked what the grade on the property was, with the exception of the 25% no build zone?

John Kellogg stated it was approximately 3% to 5%.

Commissioner Kennedy asked what grade the balance of road was, with the exception of the 10% grade?

John Kellogg stated it was nearly flat to approximately 3%. Beyond the curve it is about 5% to the highway.

Commissioner Evans asked if there was currently a house on this property?

John Kellogg stated there is a foundation that was started before the subdivision review process. He also stated that due to the age of the aerial photo, it did not show the property to the south which has been developed in the last few years.

Steve Dikeman stated he owned the lot at the top of the hill. The main concern of the neighbors is they do not want to see 5 acre lots. There have been problems with water on other property in the area in relation to the irrigation ditches. Once a subdivision for 5 acre tracts has been approved, others will follow. There is a lot of water that comes down on the flat area. The road is not up to County standards according to the contractor who installed the road. Every spring it needs to be graded many times.

Commissioner Evans asked Mr. Dikeman how long he has lived there?

Steve Dikeman stated he had lived there about 2-1/2 years.

Commissioner Evans explained that the septic system process is separate from this hearing. The Health Department makes that determination outside of the Commissioners decision. Most of the land splits in this area were done through the COS process prior to 1973. The law changed in 1973 and again a few years ago that make it more difficult to use the COS process. Those splits done through the COS process could not be reviewed which led to many improper roads. The RSID process could be used to upgrade the road or a Homeowners Association could be used to fix it.

Commissioner Kennedy asked if there was an easement for Polette Place across Lot D-1A to Lot D-2?

John Kellogg stated the easement exists and is shown on the survey.

Karen McElroy stated the Florence Rural Fire District had been contacted with regard to the road and they did not have a problem with it as long as turnarounds were available.

Commissioner Evans stated she was concerns about the drainage.

Karen McElroy stated the area gently slopes then drops off past the existing foundation. Further north, the area slopes down. This area does get considerable spring runoff but does not collect as much as it does in the lower area where it is much more level.

Commissioner Evans stated serious ground water and/or sheet flooding on the property would not be a problem.

Karen McElroy stated that was correct.

Jennie Dixon stated high ground water and sheet flooding have not been identified as a problem on this particular piece of property, outside of the no build area. In the no build area there are seeps and springs.

Commissioner Evans asked Colleen Dowdall to explain the road maintenance agreement.

Colleen Dowdall stated all of these properties are subject to covenants that include a road maintenance agreement. The agreement is well written. Commissioner Kennedy had expressed concern about requiring the road be paved. The subdivision regulations require paving for on site roads. The applicant has requested a variance from that. There is a provision in the road maintenance agreement that requires that if capital improvements are made to the road that it be done by a vote of the residents or owners of the lots. The language drafted requires that the owners of these two lots, as a result of Scott Meadows subdivision, would be considered as voting in favor of paving if it is proposed.

Jim Decker asked if each lot owner would have a vote as to whether or not this road gets paved?

Colleen Dowdall stated that is what the current covenants say.

Jim Decker asked if they would be outvoted every time?

Colleen Dowdall stated the covenants say that everyone who owns a lot has a vote. This subdivision would have two affirmative votes if paving is every proposed. It is up to the homeowners to propose paving.

There were no further public comments.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision; and approve the variance request from Section 3-2(1)(G) of the Missoula County Subdivision Regulations to allow an unpaved on site private road, both based on the findings of fact in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the variance request to Section 3-2(3)(A) of the Missoula County Subdivision Regulations for the maximum length of the cul-de-sac to exceed 1,000 feet, based on the findings of fact set forth in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-1. Commissioner Kennedy opposed.

Commissioner Evans moved that the Board of County Commissioners approve Scott Meadows Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report and the amended conditions as presented, including new Condition 2 and the changes to Condition 6 (now Condition 7 with the addition of the new Condition 2). Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Scott Meadows Summary Subdivision Conditions of Approval:

Roads

1. The following statement shall appear on the face of the final plat and in all instruments of conveyance:

“Acceptance of a deed for a lot within this subdivision constitutes a waiver of the right to protest a future RSID/SID for improvements to Old Highway 93, including the installation of pedestrian walkways or bikeways, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land.” *Subdivision Regulations Article 3-7(2).*

2. A road maintenance development agreement, subject to approval by the County Attorney’s office and OPG, shall be entered into and recorded as to these two lots, as follows:

“In the event that the parties to the covenants for Tracts A-1 and A-2, of COS 4324, Tracts C-1 and C-2 of COS 4325 and Tracts D-1 and D-2 of COS 4326, recorded at Micro Book _____, Page _____, consider paving the private road, Polette Place, under the terms of Paragraph N.13 of the existing covenants, that ownership of lots in Scott Meadows constitutes a vote in favor of paving as a capital improvement.

Fire

3. Driveway design, including emergency vehicle turnarounds, shall be reviewed and approved by the Florence Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-2(6)(E) and Florence Rural Fire District recommendation.*
4. The following statement shall appear on the face of the final plat and in all instruments of conveyance:

“Acceptance of a deed for a lot within this subdivision constitutes a waiver of the right to protest a future RSID/SID for a public water system adequate for fire protection, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land.” *Subdivision Regulations Article 3-7(2).*

Utilities

5. The following statement shall appear on the face of the final plat and in all instruments of conveyance:

“The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under and across each area designated on this plat as “Utility Easement” to have and to hold forever.” *Subdivision Regulations Article 3-5(2).*

Weeds

6. A Revegetation Plan for Disturbed Sites shall be approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed Control recommendation.*

Covenants

7. The subdivider shall file a separate development covenant for this subdivision, subject to review and approval by OPG prior to final plat approval:
 - a. Provisions in the protective covenants for burning trash shall read: “Any outdoor burning conducted on the property shall be done in accordance with the Missoula City-County Air Pollution Control Program and shall not cause a nuisance or interfere with the use or enjoyment of surrounding properties. No garbage, trash or toxic materials shall be burned and all burning requires a permit.” *Subdivision Regulations 3-1(1)(A), Missoula City-County Air Pollution Control Program Regulations and Missoula City-County Health Department recommendation.*
 - b. Include the Riparian Management Plan and, as an attachment, a drawing that locates the boundaries of the riparian area within the no build area. *Subdivision Regulations 3-13.*
 - c. State that slopes 25 percent or greater are designated on the plat as no build areas and shall be kept open and free of buildings and roads. *Subdivision Regulations 3-3(1)(B) and staff recommendation.*
 - d. Provision for implementation of the Revegetation Plan shall be included in the covenants. *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed Control recommendation.*



- e. Include a section that addresses property owners' responsibilities for living with wildlife, protection of vegetation from damage, confining pets and properly storing garbage and other attractants. *Subdivision Regulations Section 4-1(12) and Department of Fish, Wildlife and Parks recommendation.*
- f. A section shall be included that reads: "No covenants or sections thereof relating to wildlife, weed control, building setbacks, road maintenance, riparian areas, no build areas, burning trash or land use may be changed without prior written consent of the governing body." *Subdivision Regulations Articles 1-3, 3-1(1), 3-1(2), 3-2(6) and OPG recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 3:25 p.m.

After the public meeting, the Office of Planning and Grants reviewed the suggested Condition of Approval and submitted Findings of Fact and Conclusions of Law for Maus Acres Summary Subdivision. No changes to the suggested conditions were made.

THURSDAY, FEBRUARY 17, 2000

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

Claims List -- Commissioners Carey and Kennedy signed the Claims List, dated February 16, 2000, batch number 484, with a grand total of \$27,537.14. The Claims List was returned to the Accounting Department.

Claims Lists -- The Commissioners signed the Claims Lists, both dated February 17, 2000, batch numbers 485, 488, 489, 493 and 495, with a grand total of \$118,492.49, and batch number 494, with a grand total of \$80.85. The Claims Lists were returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Block Grant Contract - Chairman Carey signed a Community Development Block Grant Contract with the Montana Department of Commerce to provide funding for project activities approved by the Department under Montana Community Development Block Grant Program for FY 1999. The total amount shall not exceed \$400,000.00. The Contract will take effect upon execution by the parties and will terminate upon completion of the final project closeout by the Department. The document was returned to Cindy Wulfekuhle in the Office of Planning and Grants for further handling.

Agreement -- Chairman Carey signed an Agreement between Missoula County Public Schools (MCPS) and Missoula Office of Planning and Grants (OPG) for the purpose of OPG providing assistance and technical support for MCPS in the initial phases of grant administration. The term will be October 1, 1999 through September 30, 2000. The total amount will be \$10,400.00. The document was returned to Peggy Seel in OPG for further handling.

Memorandum of Agreement -- The Commissioners signed a Memorandum of Agreement with Volunteer Action Services of the University of Montana providing funding to allow them to hire an AmeriCorps Volunteer to recruit and place U of M tutors in the high schools.

Other items included:

- 1) The Commissioners discussed the following items:
 1. A budget transfer -- Road Department Personnel.
 2. Lolo planning process update.
 3. Memo from Absalonson regarding 4th floor remodel project
 4. Jail related matters
 5. Regionalization of the Bonneville Power Administration.

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

FRIDAY, FEBRUARY 18, 2000

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

Claims List -- Commissioners Carey and Kennedy signed the Claims List, dated February 17, 2000, batch numbers 483 and 499, with a grand total of \$105,796.77. The Claims List was returned to the Accounting Department.


Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chairman
Board of County Commissioners

MONDAY, FEBRUARY 21, 2000

The Courthouse was closed for the Presidents' Day Holiday.

**TUESDAY, FEBRUARY 22, 2000**

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.

Site Inspection – In the afternoon, Commissioner Carey accompanied County Surveyor Horace Brown on a site inspection of Old Hayes Creek Road in the Blue Mountain area.

Claims List -- Commissioners Carey and Kennedy signed the Claims Lists, both dated February 22, 2000, batch numbers 500, 501, 503, 504 and 505, with a grand total of \$113,182.55, and batch number 506, with a grand total of \$1,361.43. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Resolution – The Commissioners signed Resolution No. 2000-017, relating to Rural Special Improvement District No. 8469, for improvements consisting of the paving of Snowdrift Lane in Missoula County, Montana. Hearing date set for March 15, 2000.

Resolution – The Commissioners signed Resolution No. 2000-018 correcting Resolution No. 2000-017 and setting the hearing date for March 22, 2000.

Buy-Sell Agreement – The Commissioners signed a Buy-Sell Agreement with Pegasus Properties, LLC, which included a Dual Agency Realtor Agreement, for Parcel 1 of Certificate of Survey No. 4884. The total amount shall be \$1,200,000.00. The closing will be no later than 30 days from the date on which the parcel is available for conveyance.

Agreements – The Commissioners signed two Agreements, a Warranty Deed and Additional Covenants of the Seller, between Missoula County Airport Industrial District and USF Reddaway for Lot 2 and 3 Block 4 of Missoula Development Park – Phase 1B, a platted subdivision in Missoula County, according to the official record plat thereof. The documents were returned to Mike Sehestedt, Deputy County Attorney, for further handling.

Extension Request – The Commissioners approved a Request for a 12-month extension for the final plat for Northgate Development Park with a letter to John Kellogg at Professional Consultants, Incorporated. The new deadline for filing will be March 9, 2001.

Review of Western Montana Fair – The Commissioners reviewed and approved the Review of the Western Montana Fair and Race Meet as of September 30, 1999. The document was forwarded to the Clerk and Recorder's Office for filing.

Other items included:

- 1) The Commissioners discussed the following items:
 1. Milltown Dam and Federal Energy Regulatory Commission relicensing process.
 2. Board applications (Missoula Aging Services and Missoula Urban Transportation District Board).
 3. Regionalization of the Bonneville Power Administration.

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

WEDNESDAY, FEBRUARY 23, 2000

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

PUBLIC MEETING – February 23, 2000

The Public Meeting was called to order at 1:30 p.m. by Chairman Bill Carey. Also present were Commissioner Barbara Evans, Commissioner Michael Kennedy, County Surveyor Horace Brown, County Clerk & Recorder/Treasurer Vickie Zeier, Deputy County Attorney Marnie McClain and Chief Civil Attorney Michael Sehestedt.

Public Comment

None

Routine Administrative Actions

Commissioner Kennedy moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$366,451.23. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Continuation of Hearing and Decision: Request to Vacate a Portion of Old Hayes Creek Road (Blue Mountain Area) – (Continued from January 26, 2000)

Chairman Carey continued the public hearing.

This is a petition to abandon "A portion of Old Hayes Creek Road from the east Section line of Section 9, westerly through the NE 1/4 of the NE 1/4 of Section 9, Township 12 North, Range 20 West, Missoula County, Montana."

The reasons for the request are as follows: 1) The road is not needed.



The following landowners have been notified: Christopher Cronyn, Andy Kulla.

Horace Brown stated there was some question as to whether Old Hayes Creek Road is a County road or not. He presented various documents that show the road is a County road. Road Plat Book 1, done in 1906, shows Hayes Creek Road. A 1939 Road Book shows Hayes Creek Road and that it was maintained at that time. A 1918 topographical sheet shows Hayes Creek Road. He also showed a new map done by the Surveyors Office using GPS showing Hayes Creek Road and the trail that intersects the road. This new map was completed in early February, 2000.

Commissioner Evans stated she was not clear as to which road was to be vacated and whether it was the one the public is using.

Horace Brown stated the request was to vacate a portion of Hayes Creek Road through Mr. Cronyn's property, the only private piece of the road. The rest is all Forest Service land and is not being vacated. The total length to be vacated is approximately 1/4 mile.

Commissioner Evans stated if that 1/4 mile section was closed, it would limit access to the rest of the road.

Horace Brown stated that was correct. The trail just to the south of Hayes Creek Road that connects beyond the portion to be vacated is a 14 foot wide easement with a walking trail only. That is mostly on Forest Service land with a small portion on private land covered by an easement. The trail is quite small and not in very good shape. Hayes Creek is a road that would allow vehicular traffic.

Commissioner Kennedy stated that through this section it is possible to drive, although there are some gates that are maintained by the Forest Service. It is not possible to drive from Blue Mountain to Hayes Creek, although the road may exist across the Cronyn property.

Steve Niday, Surveyors Office, stated this is an old road that hasn't been maintained for some time but with a minimal amount of clearing, mostly fallen trees and some earth movement, it would be passable with a normal vehicle. He was referring to the road to the north. The trail to the south is merely a foot, horse, bike trail, very narrow.

Commissioner Evans stated that Mr. Cronyn wanted the road vacated so no one could go across it. There is a trail to the south that could still access the Forest Service remainder, which is a non-vehicular road. Unless Mr. Cronyn was going to improve the trail to allow vehicular traffic so the road on his property could be vacated, she was not willing to grant this vacation.

Michael Sehestedt stated that even if Mr. Cronyn wanted to do that, there is a segment from the section line that lies inside Section 10 that is not on Forest Service ground that is subject to a 14 foot wide, private, non-vehicular easement.

Commissioner Kennedy stated the question should be answered as to whether vehicular traffic is necessary. Most of the people he has spoken to are concerned about non-vehicular passage through that land. The Forest Service would likely need administrative vehicular use of the road, not recreational use.

Horace Brown stated the Forest Service could use the road administratively but that closes it to the public uses. Once this road is vacated, it is gone forever. He felt this road was in good enough condition and was needed by the public for future use. He would hate to see this given away.

Wally Congdon, representing Mr. and Mrs. Cronyn who were present, stated that at the last hearing this was left at having the Commissioners do some fact finding to figure out which roads were there and which one the request to vacate pertained to. The investigation has revealed that the lines represented on earlier maps are all the same road. It has taken some time to figure out which access is which. As the correct road and location has just been revealed, they have not yet gone back to the Forest Service to find out what access they desire. In their previous letter, they asked that nothing be done until they figure out what they want and if administrative access would be acceptable for their needs but not to have an open, public thoroughfare. The next step is to go back to the Forest Service to get their feedback and provide that to the Commissioners and then finish the hearing and make a decision. As this information has just become available, they have not had a chance to contact the Forest Service yet. There are people who would like to speak to this subject and he would like to be able to circulate what information he receives from the Forest Service to them and the Commissioners. He was not sure the Forest Service believes an open public access is what they desire for the long term. Administrative access is what had been proposed to them. He requested the hearing be continued to allow time to hear back from the Forest Service.

Susan Reneau, President of the Hayes Creek Homeowners Association, stated there were several people in the audience who would like to speak to this matter, including property owners Pat and Mike Gray, on whose property the small trail to the south is located. She presented some photos of the area and read a statement from the Homeowners Association: *"We, the undersigned as members of the Hayes Creek Homeowners Association, believe that Old Hayes Creek Road should remain open for non-motorized recreation public access and motorized access for fire suppression and timber management. Such access is critical for fire safety, U.S. Forest Service timber management practices and entrance and exit to and from Lolo National Forest by citizens."* Up until a short time ago the Cronyn property had posted no trespassing signs. It is a distinguished road and would be the appropriate road for fire suppression equipment. The Homeowners Association is in agreement with the County and the Forest Service that this road should not be closed. It is an historically documented road belonging to the County and should remain in public access. She emphasized that the trail to the south that connects with Old Hayes Creek in the recreation area is not sufficient for public access or fire suppression.

Mike Gray stated he owns the property where the small trail exists, that was "volunteered" if Old Hayes Creek Road is abandoned. This trail has several drawbacks. Mostly all winter, from December to April, that trail is closed. It is in a shaded area where the ice and snow don't melt. They also don't maintain it during that time. Old Hayes Creek Road is on a south facing hill and does get sun during the winter so it remains passable. At the trail on his property parking is very limited with space for only two cars. It is on private property but they allow the parking as long as people keep the area clean. The path leading to the Forest Service is gated and fenced. The gate is kept closed by those who use the path



and the fence is in good repair. The path through their property goes along the stream bed. If a road needed to be created for fire suppression, a lot of sediment would be put into the stream. They personally maintain that part of the trail.

Commissioner Kennedy stated the issue before the Board was only whether or not to vacate Old Hayes Creek Road, it has nothing to do with this trail in terms of providing alternative vehicular access.

Mike Gray stated that Old Hayes Creek Road provides the only vehicular access to the area, especially in the event of a fire. If Old Hayes Creek Road is closed and it pushes all access to his small trail, it would not be able to handle that much traffic.

Wally Congdon stated it had never been proposed to close this road outright and bar Forest Service access. The petition does not require any action from the Board until the details can be worked out with the Forest Service. If the Forest Service says they want an open public access, they would most likely withdraw their petition to vacate. If Forest Service administrative access only and alternate public access is appropriate, they will bring that action before the Board. He apologized for not having that information yet, but they needed to know the exact route before that information could be obtained.

Chris Swartley stated he was a resident in the Hayes Creek area. He is the last house on Old Hayes Creek Road before it enters the Cronyn property. There was a fire only a few hundred yards up that road a few years ago and without the road, the fire could not have been suppressed. The road also allows access further up the mountain into the Blue Mountain Recreation Area. People have used Old Hayes Creek Road for more than 20 years, despite the no trespassing signs the Cronyns have posted. He has always believed this is a public road and the public has a right to use it. It is the way to get to the Blue Mountain and he could not understand why the County would consider ever closing this access. A lot of his neighbors felt the same way.

Susan Reneau asked that all those in the audience from the Hayes Creek Homeowners Association stand so the Commissioners could see the support for keeping this access open. Approximately 10 people in the audience stood in response to her request.

Chairman Carey stated this hearing would be left open until a response is received from the Forest Service. He was not willing to accept the Forest Service's recommendation outright. He was leaning in favor of keeping this public access open. The date of April 5, 2000 was set as the time for the continuation of this hearing.

Hearing: Proposed Amendments to Floodplain Regulations

Chairman Carey opened the public hearing.

This is a request to consider adoption of amendments to Missoula County Floodplain Regulations.

Floodplain Regulations are meant to prevent property from being built in harm's way, prevent damage to property caused by others actions and allow streams and rivers to convey floodwaters naturally.

Proposed amendments would prohibit new levees and limit new rip-rap and other bank armoring. Rip-rap and levees, while providing a short-term localized fix, often increase bank erosion and flood damage to nearby properties. In addition, these structures harm aquatic and terrestrial habitats.

The amendments would discourage bank stabilization projects unless they are a part of a larger project that addresses the cause of the instability. Cosmetic bank stabilization projects may increase instability of nearby property and harm stream health by limiting natural stream migration. However, the County recognizes that misguided historic actions have contributed to bank instability and may need to be addressed. For example, channelization of the upper Clark Fork and Lolo Creek by railroads and highways has caused very unstable banks as the watercourses try to regain length. And increased sedimentation and loss of riparian vegetation on Ninemile Creek have resulted in a shallow, braided stream with unstable banks and decreased aquatic habitat.

Where bank stabilization efforts seem needed to address these historic problems, the amendments encourage the use of "softer" bank stabilization techniques that can slow bank erosion, increase stream complexity and allow for long term bank revegetation. In short, people would be able to protect their property in ways that do not harm nearby properties or the public's waterways.

The amendments would also prevent some types of flood damage by ensuring that new bridges do not cause constrictions or limit sediment transport, which can result in erosion of adjacent property. Utility crossings would be accomplished without disturbing the bed or banks of the stream, which would prevent erosion. Another preventative measure is to prohibit large scale clearing of native streamside vegetation, which can help prevent bank failure during high water.

Brian Maiorano: Thank you Bill. I'll be brief because it looks like there's one or two folks who might want to say something today. Mostly what I'll go over is just for the record, a brief summary of the regulations as they're proposed to be amended. First, as a reminder of what Floodplain Regulations, the intent of them are. The intent is to not only protect property from being built in harm's way, it's also to protect folks from doing things that could cause damage to their neighbors property and also to allow for water courses to naturally flood. The specifics of these regulations, proposed amendments, as we know, are to address levees and rip-rap and other bank stabilization projects and they take into account a philosophy that's moving away from flood control to flood damage control. What I mean by that is for the past 50 to 100 years, we've tried to prevent floods by altering the river channel and thinking that we could outguess Mother Nature and fix things, if you will. What we've learned is that we really can't, there's always a flood that's bigger than the levee, there's always a flood that will take out the rip-rap, the houses that are down on the river banks are not safe from flooding damage. So what we've moved toward is flood damage control which means we're looking at making sure that our public infrastructure and private residences are built and located in a way so that they will not be damaged when the inevitable flood happens. Real briefly, I won't go into the details of the specifics, but as you know, with the rip-rap, we're proposing amendments that would greatly limit the amount of new rip-rap that could go in. We recently did an inventory of the Bitterroot, Blackfoot, Clark Fork rivers, and then also Ninemile Creek and Lolo Creek, and on those 121 miles of streams and rivers, there is 29 miles of rip-rap and levees, which a lot of folks in the public



were not only astounded at, but also aghast at. One of the philosophies in this is to limit the amount of rip-rap that would be allowed. It would still be allowed to protect public infrastructure such as existing roads, existing bridges. What we're moving toward is that other bank stabilization techniques such as the projects that involve woody debris and other softer stabilization techniques that allow for revegetation of the river bank and most importantly, don't hurt downstream landowners and don't have as many negative impacts to the river. So, in other words, folks would still be allowed to protect their property from stream bank erosion but they would need to do it in a way that was friendly to their neighbors and friendly to the river. We believe that the exceptions we've made for when rip-rap would be allowed are reasonable. Some folks make a really good case for why there should be no more rip-rap allowed at all, especially for protecting residential structures with the philosophy, which is, I'll point out, in the intent of our regulations as passed down by the State, is that those who occupy the floodplain need to take responsibility for their actions, is explicitly written into our regulations. But even with that in mind, we realize that there are existing residences on a stream bank or river bank that might be threatened by the river and that there are some instances, if that house could not be relocated, that rip-rap would be allowed. Aside from the public infrastructure, that would be the only instances. Also, I'll address, there would be no new levees allowed. There are a couple of exceptions in there also, not for new levees but for maintaining existing ones. The exceptions are for ones that are publicly maintained, generally by the County, and those are ones such as the one along the Clark Fork north of Third Street, the one protecting the Rodeo Ranchettes neighborhood across from Lolo. I'll also point out that there is an exception in there allowing for setback levees to be built if they're removing an existing levee from a river bank. I see a few folks from Lolo here who may be concerned about that, or interested in that concept. We feel comfortable we've addressed their concerns for protecting their places without damaging other properties across the river. And then, lastly, just talk about, there are a couple of other preventative measures that we're proposing so that instead of trying to fix unnatural bank erosion, is we can prevent it. The first one would be designing bridges generally with a slightly longer span than they have now and making sure that we're not increasing velocities as the water passes through, making sure we're not causing aggregation of the stream by damming up water. The second big preventative measure is to limit major clearing of stream bank vegetation along a river course. That riparian vegetation is absolutely crucial to keeping a river bank from eroding. Lastly, I'll just wrap up by talking about the process that we went through with this is we started back in October with what I called a technical review, asked probably 20 different agencies, various consultants and other interested parties to help us initiate a first draft. After that went through a couple of months of review we sent that out to a bunch of home builders, real estate agents, surveyors, consultants, and various other interested parties asking for more comment and then this last thing that we've done is the general public comment which folks are here today to talk about. And you'll also note that based on some of the comment we've got so far is, I passed out some suggested amendments to the version that you have in front of you, the February 1st version. Those are all clarifications of wording that folks thought were confusing and so just ways to clear that up. In summary, I believe that these proposed amendments are fully within the intent of our Floodplain Regulations that the State gives us the authority to administer. I believe they'll go a long way to not only protecting property but also preventing folks from doing things that can damage other people's property and also will have a great benefit to the natural functioning of our streams. Thank you.

Chairman Carey: Thank you Brian. Would somebody like to comment on these proposed regulations? Yes sir.

Mark Behan: I'm Mark Behan, resident and homeowner on Lakewood Place in Lolo. I support the amendments to prohibit the construction of new levees and reduce the use of rock rip-rap to extreme situations. Unfortunately, these amendments were not part of the Floodplain Regulations 20 years ago. The County Floodplain Administrator, Brian Maiorano, was quoted as observing that rock rip-rap and stream bank levees often have a domino effect, creating undesirable effects downstream. This is the effect of the County maintained levee and rock rip-rap at Rodeo Ranchettes. The Bitterroot River is deflected by these structures, predictably so, across its channel to the levee that formerly protected 150 homes around Lolo and Hayden lakes. This levee has failed, washed out in places and hydrologists wonder if it could withstand a 10 year flood event, let alone a 25 or 50 year event. If this levee is breached at this point, it is possible, say the hydrologists, that the river will cut a new channel in the vicinity of Lolo Lake, with serious consequences to a large number of homes, all constructed in subdivisions authorized by previous County Commissions. In addition to supporting the long-overdue amendments, I ask the Commissioners to join with the affected homeowners to find a permanent solution to past errors. Missoula County is a partner with the homeowners in this situation. The north portion of the failing levee is on County property. The County road leading to the sewer plant, Lakeside Drive, acts as a levee, limiting river access to its floodplain. And the County owned sewer plant, protected by its own levee, constricts flood flow at a narrow north end of this area. This constriction causes flood water to back upstream from the sewer plant, which increases flood depths and danger to our properties. The affected homeowners met on February 2nd to examine our alternatives. Hydrologists presented the alternative of constructing a setback levee, removal of some or all of the existing riverbank levee, including that on County property, riverbank stabilization by revegetation, wood river bank protection such as wood tree stumps and perhaps lowering the County road to allow the river to regain some access to its floodplain. Our meeting adjourned by a unanimous vote in favor of a feasibility study of this alternative, probably led by NRCS. I ask that Missoula County become a participant in the study and if the setback levee proves desirable, the County become a sponsor in its development. County participation is justified because the setback levee and other improvements would protect County property, such as Lolo Beach Park, the sewer plant and the road, and ameliorate damaging past and current County actions, including the County's participation in constructing the failing riverbank levee and constructing and maintaining the Rodeo Ranchettes rock rip-rap. Thank you.

Vicki Watson: I'm Vicki Watson. I'm a professor of environmental studies and I specialize in watershed science at the University of Montana. I'm also a member of a lot of conservation groups that I think some of them will be speaking here today, indicated that they'd like me to say a few technical words on their behalf, including the Clark Fork Coalition as well as some others. I want to express my very, very strong support for these floodplain revisions. As Mark Behan said, they're long overdue and they're a sensible, reasonable and science based approach to reducing and preventing flood damage, both now and in the future. If Missoula doesn't act to provide greater protection to its floodplains, then we can certainly expect to see increasing flooding and erosion in the future as has occurred all around the country as floodplains become more and more developed. Most of the structures that are built with the intention of reducing flood damage actually increase flooding and erosion, but somewhere else on somebody else's property. Use of levees and rip-rap starts an arms race of building higher and more levees and using more and more rip-rap, until everyone's at greater risk and the river's been transformed into an ugly ditch. The new regulations recognizes that the best way to prevent and reduce flood damage is to understand the river and try to work with it and not against it. Flood damage is reduced or prevented by discouraging placing new residences and other structures in the floodplain where they would tend to increase flooding and erosion of nearby areas. We have to stop repeating past mistakes by building more levees and using more rip-rap and instead make more use of relocation and elevation of existing structures. Where concentrated

existing development requires that a levee be maintained, these regulations will actually make it cost less to do so in the long run because, again, they've reduced, they've prevented that rising flood and that increasing erosive power, so it will make it actually easier to maintain those existing levees that really do have to be maintained. The regulations recognize that sometimes past mistakes made upstream have increased downstream flooding and erosion but rather than repeating those mistakes and worsening the problems still further downstream, these regulations try to correct the problems by encouraging restoration of the floodplain where that's possible and making limited use of softer stream bank stabilization techniques that provide some temporary bank holding while the stream recovers or while we try to identify floodplain areas that can be restored to their floodplain functions. These regulations also prevent flood damage by ensuring new bridges and roads do not cause constrictions that increase flooding and sediment deposition. And something that's very near and dear to my heart, the regulations try to protect streamside vegetation, which up to this point had very little protection and that is by far the best way to control bank erosion. Flooding and channel meander are natural and essential to a healthy river. If we, I don't think we can, but if we actually could control flooding and meander, we'd wind up converting the river into a ditch that has little life and less beauty. We have to stop fighting the river with levees, rip-rap and clearing of vegetation that holds the banks. We have to work toward restoring as much of the floodplain as possible and protecting that natural stream bank stabilization, the vegetation. Floodplain regulations can accomplish only some of this but they're certainly a reasonable part of a larger effort that would probably include zoning and other types of measures. Some of those measures might include construction setbacks, restoration of old stream meanders and removal of old dikes that are not considered necessary anymore. All of these would help to reduce flood damage in the future. But I hope that you will pass these reasonable, limited measures that are outlined in the Floodplain Regulations. Without them, there's really little hope of stopping the concrete arms race and preventing greater flood damage in the future. Thanks.

Chairman Carey: Thank you Vicki.

Jim Weaver: Good afternoon. My name's Jim Weaver, former district engineer for the Department of Transportation and, in fact, today I am speaking for MDT. I have a bachelors and a masters degree in civil engineering, a long time ago. My graduate work was all in hydraulics, hydrology, river mechanics and water quality type issues, even though I haven't been active in the field for a number of years, I have stayed interested and, hopefully, up to date. My comments are prepared from the summary of the regulations and if what you described is accurate, some of my comments may not be as appropriate. First of all, I believe some of the proposed changes are unnecessarily restricted and if implemented, will put much of our public infrastructure at considerable risk. If we can't adequately protect our roads, bridges, sewer plants, water treatment plants, etc., from major flood events, the seriousness of the flood emergency will be compounded many times over. Damage repair costs will escalate and greater environmental damage will occur. These new regulations make rip-rap out as a bad guy and prohibit rip-rap in all but extreme situations. I don't believe there's any justification for this type of restriction on all rivers and streams in Missoula County. The summary of the proposed regulations implies that if you provide rip-rap armoring at one location, it will accelerate erosion at another. That is only partially true and on unstable, braided and meandering type streams. Many of Missoula County's rivers and streams are classified as straight and are stable. Softer bank stabilization techniques such as logs and woody debris will not afford the same level of protection as rock rip-rap. And I guess I ask you, would you be comfortable having the Missoula City treatment plant protected by woody debris? Would you be comfortable having the Buckhouse Bridge abutments protected by woody debris during a 100 year flood? I ask you how you protect a scour-susceptible bridge pier with logs and woody debris? You can't do it. Can you imagine the disaster if we lost either of the Buckhouse Bridge or the sewage City treatment plant. It wouldn't be just an emergency, it would be a true disaster. Please don't get me wrong, I'm not totally opposed to more environmentally friendly soft bank protection type techniques. There are some less critical locations where they may provide adequate protection. Your proposed amendments for bridge construction standards prohibit increases in stream velocities and allow no encroachment in the floodplain. You need to think about what that means. Now if what you said, it would slightly increase the bridge lengths. The way I read this, it would drastically increase many bridge lengths. This is just not practical nor feasible. These amendments probably would have prohibited North Reserve Street from being either built or widened, because of the increase in cost. These regulations would probably prevent ever replacing Maclay Bridge on the proposed new alignment because of the increase in cost. At the very least, the cost would be increased drastically. That is simply not necessary. The amendments also prohibit sediment deposition. Although this sound good, there is no scientific way to do any kind of quantitative sediment analysis. This rule would lead to many arguments and disputes and is potential fodder for lawsuits. Also, erosion and subsequent sediment deposition is a very natural part of braided and meandering stream morphology. Your current Floodplain Regulations restrict increases to backwater during the 100 year flood to half a foot. I believe that this is a reasonable regulation and that it provides the protection you desire. I ask you if there are any problems with bridges that have been designed and constructed under this situation. Now, granted there are some very old bridges that weren't. I guess I ask you if there are any problems with bridges that have been constructed in the last 20 or 25 years under that standard. In summary, I ask you to seriously consider the effect of the proposed amendments. I believe they will turn an emergency into a true disaster, because we can't adequately protect our public infrastructure. So either leave the regulations alone or certainly make them more practical. Thank you.

Chairman Carey: Thank you Jim. Someone else like to speak to this?

Bruce Farling: Mr. Chairman, Commissioners: Bruce Farling, Executive Director, Montana Trout Unlimited. I'm an environmental scientist by training with an academic specialty in stream geomorphology, albeit 25 years ago, none the less. We strongly support the regulations proposed by the County. I think the staff did a really good job working with a lot of people to develop these regulations, talked to a number of people in the scientific community, consulting community, etc. We have recommended some changes, most of them are some tweaking of some language, there's a couple of sort of fundamentally different approaches we're requesting for a couple specific regulations, but largely we concur with about 95% of the recommendations. I'd have to disagree with Mr. Weaver about these regulations leading to potential harm to our public infrastructure. Remember that these regulations do not, are not going to be used inside the City limits. So we're going to have essentially the existing regulations taking care of the City's infrastructure. I might also add that I think it's a pretty significant body of scientific evidence that shows that some of the flood control that we've done on a number of our rivers have actually threatened a lot of public infrastructure around Montana and outside Montana. That aside, there is a part, I won't talk specifically about our suggestions, but there is a part of public infrastructure I really think that the Commission, City Council, government bodies need to weight when you're looking at things like Floodplain Regulations. You obviously have to balance private property rights with public needs out there. Well, there's a bit of public infrastructure that I think sometimes get slighted, and that is our rivers. Most of the streams that are going to be affected by these regulations, and that see the bulk of the rip-rapping, bendway weirs, other types of

erosion control mechanisms that we're putting out there, are navigable streams. They've passed State of Montana navigability tests, which has been upheld in the U.S. Supreme Court. What that says essentially is that the beds of these streams are not owed by the adjacent landowners, they're owned by the State of Montana and held in trust for the people of Montana. So whenever we're going to put in a bendway weir or we need to anchor a bunch of rip-rap or something, often requires using public land and so in the tradeoff to do that I think we have to remember that that particular public property and resource right needs to also be balanced with the property rights of the adjacent owners. I think we sometimes need to keep that in mind. The other couple of points I wanted to make at, I think that these regulations and the increasing demand that we have on erosion control for some of our streams in Missoula County could be obviated somewhat if we looked at doing a couple of other things. Number 1, establishing, possibly, some setbacks by regulations. It's happened in other places in Montana, there's a few counties that have established setbacks from rivers and it's been happening all over the nation. I think that would reduce, if we did that here, reduce the administrative costs of administering Floodplain Regulations all the time, every time somebody wants to come in with a project that's within the floodway or within the 100 year floodplain. The other thing that I really strongly recommend, I haven't developed this fully, I have talked to Brian about it a little bit, is that to look at some of the streams we have that are already heavily engineered, the lower Bitterroot, as we've heard today, Lolo Creek certainly, probably the Lower Blackfoot, is to consider the establishment of essentially some stream stabilization caps by linear feet. I think there are some ways where we can scientifically determine, not with 100% certainty, but with some reasonable level of certainty, a reasonable amount of linear stream bank that will be acceptable, will provide relief points for floods, will also provide enough protection for some private property, maintain complexity and habitat and stuff like that for fish. Whether that's 5%, 10%, 20%, I think we need to look at that on individual streams, look at the particular geomorphological types, look at the existing situation, look at calculated flood heights, things of that nature. I think we ought to be looking at capping so if somebody wants to come in and add some rip-rap, we need to be thinking about some options for taking it away and creating some relief points for floods too. So, I really encourage the County to be looking at doing things like that that supplement these common sense regulations that are the subject of the hearing today and with that I certainly appreciate the opportunity to comment. Thank you.

Chairman Carey: Thank you. Would someone else like to speak to this?

Sandra Bolles: My name is Sandra Bolles and I'm a property owner along the Clark Fork River. My string of degrees after my name have nothing to do with the river. I'd like to express some concerns about the proposed amendments. First I'd like to thank you for the opportunity of voicing these concerns and especially to thank you, Brian, for being a very unusual bureaucrat, in as much as you provide very clear and thorough explanations of sometimes complex matters. Also, you're a man of your word and you tend to deal with people in a rather light hand for a bureaucrat, compared to some government officials I've met. Okay. However, we all know that we can't guarantee that people like Brian are always going to be around in these kinds of positions. The first thing that I'm concerned about has to do with the solicitation of input to this process. I understand that we as property owners have been the last people to be able to give information about this or ask our opinions. The first comments were solicited from various resource conservation agencies and environmental agencies and the like. I have no problem with that part of the process. I know these folks to be well-meaning and pretty well educated about what's going on with the river and they truly care about our environment. However, the next solicitation for comments was directed to private groups that make their living from matters pertaining to development in the various drainages – developers, real estate agents, consultants and so on. I don't for a minute believe that these folks have my interests or any other small property owner's interest or even the river for that matter, interests in mind. I think that they have their own interests in mind. I think, in fact, that some of these people have been responsible for some of the development of land that should never have been developed along the Clark Fork River. For example, the land across the river from my property is the site of a housing development that's in danger of being swept away with extreme flood conditions.

Commissioner Evans: Would you refresh my memory as to where you live?

Sandra Bolles: I live between Turah and Clinton. You know, we have probably over a quarter of an acre of river frontage. Quarter of a mile, sorry about that! 30 acres and practically all of it bordered by the river. The land was developed across the river quite a while after our place was in existence. Our development, which is small, has been there for approximately 30 years. I've lived on the property for 20-some years. We were warned by some factors in the County, not you, that we may have to give up some of these pre-existing developments that were on this property, yet our land was far more secure than the people across the river, who developed their property probably 10 years later than we did. The developers were able to influence the decision-makers in this County to do what they wanted to do. I don't believe that that can't happen again. I understand that in this process today, mailings were made to these developers, real estate agents and consultants asking them for their individual input into this process. The same favor was not extended to individual property owners in the affected drainages. We know that you folks have the names and addresses of all those affected property owners. Why were they not included in this mailing. I only learned of this hearing from a friend that read the notice in the Missoulian. I don't read the Missoulian, I would imagine lots of the property owners that are affected don't read the Missoulian. Congruent to this same concern, we also know that the people responsible for rip-rap, the most of the rip-rap along the river, have not been private property owners. They've been big business and government concerns such as Bonneville Power, Yellowstone Pipeline, the Department of Transportation, Blackfoot Communications, and so on. I can't believe that these folks, these big interests, won't be allowed to protect their interests in any way they choose. I also believe that individual property owners will not be allowed to use the same methods as what will be used to protect the Interstate, the power line, the underground cables. While it may be unintentional, the County is and will continue to serve these larger interests. I have another, let me make it clear that I'm not interested in further development. I don't think that that should be done along the rivers. I don't think any further development should be happening in the State of Montana, but that a third generation Montanan talking. But I have a more specific concern too. There's specific wording about preventative actions against bank erosion, "prohibit large scale clearing of native vegetation along a stream or river." Last year, a contractor came through our land and cleared, against our wishes, land along our riverfront and along our creek. They cut down everything including 30 year old trees to the smallest saplings and bushes in a 50 to 100 yard swath for approximately a quarter of a mile along the river's edge. It was horrible. This was done, according to them, because of easements given to Montana Power and the Bonneville Power Administration. This is an example, as far as I'm concerned, of large scale clearing. We were powerless before it. Can you guarantee the property owners that these folks won't be able to clear this land again and that future organizations won't be able to come on our land and spray chemicals or force us to spray chemicals to kill knapweed and other weeds along the river. Is it just the property owners themselves that won't be able to clear vegetation, protect their land in the same way that other larger interests are protecting their land? I'm not saying that because I want to necessarily clear any

vegetation, I don't, but to point out the possible real inequities of this system. I applaud your efforts to try to make the drainages more environmentally friendly and to check certain kinds of development. But I have no faith that we, the property owners, are going to be treated equitably in this process. Thank you.

Chairman Carey: Thank you. Would someone else like to speak to this?

Jay Raser: My name's Jay Raser and I currently own property on the Clark Fork River. It's been a long time since I've been in here to talk about this. The first time was over 20 years ago, when Barbara first was a County Commissioner. And if I remember, at that meeting she got really irate with me because I threatened to sue her.

Commissioner Evans: And now he's just one in a long line.

Jay Raser: Well, I didn't sue her, but I did sue a gravel operation here in Missoula, who continually violated the Floodplain Regulations that I might say the County didn't do very much to enforce. I don't have the education that some of these other folks do in river morphology and hydraulics at an institution. However, I paid thousands of dollars to get that while I sat in a courtroom here and listened to experts on both sides argue this thing back and forth. And what I realized when I was all done with this was that river morphology and hydrology are about as scientific as astrology, I'm not talking astronomy here, I'm talking astrology. My erosion problems didn't occur in the height of the flood season. I lost my property between Christmas and New Years and my bank was heavily vegetated and the vegetation on the bank, the root balls of the trees, took out huge pieces of my real estate. I used to have quite a bit of separation between my home and the river but by the time New Years was here, it was gone. So when I read these comments, or listen to this talk here, what bothers me is you've got a shotgun approach to a problem that can't be dealt with that way. Currently, my property, I pay a lot of money to rip-rap some of my property, there's no way I could afford to rip-rap all of it. But on both sides of my property and across the river, both up and down the river, it's rip-rapped. Now, reading this regulation, I can't rip-rap what little piece I got left, even if it starts to go away, which I think is a crock of bull. Because I consider the fact that the problems I got were somewhat exacerbated and created by Floodplain Regulations, and to some degree by State mining regulations, which allowed Monrock to build a dike over there that no one recognizes is there. But, Mr. Weaver and the folks that built the bridge down there, several years after the bridge was built, we had a high water event and suddenly we have all this deposition in the river and a gravel bar and an island that weren't there the year before. Just getting back to this, you're relying on scientific opinion that as far as I'm concerned isn't worth the powder to blow it away. When you have a problem and you're a property owner and you're losing your property you need to do something about it. And when I had that problem, I dealt with the conservation folks and they came out and issued me an emergency permit and I saved myself from floating down the river. I don't live in the floodplain. I'm 2-1/2 feet out of the 100 year floodplain. And the next thing that bothers me, in the last few days I've been hearing about the removal of the Milltown Dam. The Milltown Dam does function as a flood control and you've allowed all of this rip-rapping and straightening of the stream. When I was a kid walking across from St. Anthony's School to the Wilma Theater, I used to watch the river run along the Wilma Theater. There's a lot of floodplain changes that have taken place here with the government's co-opted again. I guess what I'm trying to get at is that I just think that this regulation, however well intended, is somebody has decided that we need a regulation and they're going to print a regulation up and then those of us that get affected adversely by it 4 or 5 years down the road, we get to come back in here and fight about it. A lot of what's gone on is the fault of the fact that the community has grown and you've straightened the river out. And you can't cure that. That river, that water that flows down that river is only going to be a problem now, if and when you take out the Milltown Dam. And I, you know, Trout Unlimited and all these other folks that have these high paying, not high paying, but they are paid to come here and lobby you, they aren't the people that necessarily live in the community and have to put up with what happens after you come up with a regulation or when you don't enforce regulations that are currently on the books. One other comment that I want to make that has nothing to do with this. Now that you Commissioners have provided some of the low-lives in our community with a new place to live out there across from when I live, I think it would be really great if you'd float a bond issue to provide a new administration building so that when we have to leave our work to come down here and meet with you, we don't have to walk three blocks to do it, we don't have to stand in a room to do this. I think that the citizens, the people that pay taxes around here, deserve better than this abortion that you have plastered on a really nice courthouse. And the next time, when you get around to passing bond issues I wish you'd do that.

Commissioner Evans: I'm not clear what you're saying Jay?

Jay Raser: I'm saying first of all I don't like coming down here and having to discuss this issue of floodplain and further I don't like doing it under the circumstances when the County, instead of building any more jails, why don't we build a new facility so that people that have to do business at the Courthouse can do it in an atmosphere in which we don't have to walk three blocks to get a parking place and you've got room to operate in. That's all.

Commissioner Evans: Thank you.

Jay Raser: Sure.

Chairman Carey: Thank you. Someone else like to speak to this?

Clint Brown: Thank you for the opportunity to talk to you. My name's Clint Brown. I'm a hydrologist by training and today I am speaking, although Mr. Decker just walked in the door, I'm going to go ahead and speak on behalf of both of us. He's a hydrologist also. By profession, our job is to do river restoration. That is what we do for a living, fisheries habitat enhancement. We do a lot of work for U.S. Fish and Wildlife Service, Montana Fish, Wildlife and Parks, Trout Unlimited, we've worked for you folks, it's nice to finally have, we've been working through Brian and Marnie for so long that it's nice to have a face for the "Commissioners." We were involved in the original development of some of these changes, or at least actively voiced some of our opinions on these, the proposed regulations. We reviewed them at their current state although there are some clarifications and things that I think that could be made. Overall, 1) these regulations allow for the protection of the public. In other words they are going to try to prevent the public at large inhabiting the floodplain and putting themselves in a dangerous situation during a flood event. 2) These regulations allow for the public infrastructure to be protected. Yes, we are trying to discourage rip-rap. Does it eliminate the option of rip-rap? No. Third thing, these regulations protect the natural resource and whether you directly derive your benefit from the natural resource, a lot of us take great pride and enjoyment from our natural resources, either directly or indirectly. I think that that is something that we have to protect. Lastly, I would like to point to you that you have a

variance procedure so if you have something that doesn't fit the normal pattern and it doesn't make, or it falls outside what we think the regulations are currently set up for, we have a variance situation, people can come, can get exception from the Floodplain Regulations. So to me, you've protected the public, you're protecting the infrastructure, you're protecting the natural resource, and for those outlying cases, you've got a variance procedure. To me, this is a great deal. We strongly encourage you, strongly encourage you to consider these Floodplain Regulations. That's all I have to say.

Commissioner Evans: Thank you.

Chairman Carey: Thank you Mr. Brown. Somebody else like to speak to this?

Jim Greene: My name is Jim Greene, with an "E" on the end please. I'm an avid canoeist, an avid birder and a father of two daughters who are concerned about the natural well being of our Missoula County for the next many generations. I support the regulations in general, specifically the prohibiting of further rip-rapping of the County waterways, except where absolutely necessary, reflecting on Mr. Weaver's comments. All of the people who have inhabited Missoula, prehistorically, historically and currently, have been drawn to the area to a great extent by the natural, free-flowing rivers of the region and the natural communities those rivers create and support. Rip-rapping and/or armoring the banks of our rivers destroys the naturalness of these rivers and degrades the beauty and health of the valleys we have chosen as home because of their natural attractiveness. Specifically, rip-rapping the banks of rivers and creeks decreases the nesting sites for the many birds that live along the water ways in our County. It encourages the invasion of undesirable exotic species of vegetation. It decreases the available habitat for river mammals, such as beavers and river otters. It prevents the regeneration of cottonwood trees and other native vegetation along the river ways. It also destroys the diversity and beauty of plant and animal life within the riparian zone. Rip-rapping prevents floods and landslides which are important to the river's health and healing. And finally, rip-rapping destroys the ability of aquatic insects to reproduce and provide food for the fish and birds that live along the various County water courses. Denied further rip-rapping of our local rivers is a reactive approach to restoring healing and maintaining the health of our rivers. A more intelligent proactive approach would be in the future, to let nature guide the course of future human development. All of our past laws and land utilization actions are human based. They reflect and have responded to human wishes. Future laws and land utilization actions should be nature based. Rivers, by definition, need to wander, they need to change course frequently. Development should respect and permit only what is best for nature. Homes should not be built near riverbanks. Generous, appropriate setbacks should be required for all future development. That way, people can live near the river without fearing the loss of some of their property without the necessity of rip-rapping the river banks and thus allow the rivers to follow their natural courses. You are elected County Commissioners. We trust you to make the decisions necessary to keep Missoula County as attractive and desirable a place to live as it has always been. Please allow no more unnecessary rip-rapping of the waterways that course through our County and please encourage the requirement of setbacks for all future riverfront development. And thank you for the opportunity to speak.

Chairman Carey: Thank you Mr. Greene. Somebody else like to speak to this?

Loran Frasier: I'm Loran Frasier, the new district engineer for the Department of Transportation and I guess my experience in reading these comments, I'll try and keep it brief. My concern is for the infrastructure, for protecting a \$1, \$2 or \$7.5 million bridge that, you know, allowing some type of rock that we define, you know, use of rock. I have experience with one project in the Shields River three years ago, where we installed a lot of this soft type of bank protection using root wads and cottonwood trees that were wrapped with cables and anchored down. We placed those and the floods came the following year. The floods went and I don't know where all that stuff went, it left the Shields River and was somewhere between Livingston and Billings. And so, before we take, I guess, a shotgun approach that we're going to use all this, it's neat stuff and it does wonderful things for the environment along the river, for the riparian habitat. But before we take that blanket approach and say we're going to put it everywhere, I guess I'd kind of like a little flexibility for protecting some types of our valuable infrastructure. Bridges have been built in history for man to transverse across and we need them now for emergency services, commute travel, all that kind of thing, so just keep that in consideration. Thank you.

Chairman Carey: Thank you Loran. Brian?

Brian Maiorano: I would like to just clarify that the regulations as proposed for amendment would allow rip-rap to protect roads and bridges. The softer techniques would not be required for bridges and roads.

Chairman Carey: Thank you.

Mal Alexander: The Frenchtown Irrigation District.

Chairman Carey: Sir, would you please identify yourself for the record.

Mal Alexander: I'm Mal Alexander, the secretary of the district. The Frenchtown Irrigation System was constructed in 1936 with 35 miles of main canals and main laterals to serve 35 users. 4,500 acres were irrigated. The bottom of Lake Missoula has been largely utilized as farmland throughout the years. The area is now mostly subdivided into 40 acre, 10 acre and 5 acre lots. The water usage has gone with the land. 350 owners pay \$9 per acre for this water whether they use it or not. The Clark Fork River must provide the water. The intake system is 1 mile south of Kona Bridge Road on the east side of the river. It is almost entirely within the NE 1/4 NE 1/4 of Section 17 and the SE 1/4 SE 1/4 of Section 8, both in T13N, R20W. The surrounding farmland is within the Bonnie Snaveley property. The Frenchtown Irrigation District owns 21.54 acres (deeded) within which is the drainway that leads the waters of the Clark Fork River to the head gates. This drainway is marked on the east side by a high natural bank, on the south side by a natural channel from the river and 110 feet to the west an embankment 15 feet wide, 10 feet high and 1,880 feet long runs in a northerly direction to 60 feet south of the head gates. This drainway is along the east side of a "river deposit" 3,603 feet long and 450 feet wide at its south end and 950 feet wide at its north end. Except for the drainway this river deposit is covered with large cottonwood trees, 12 to 24 inches in diameter. The drainway has been mostly secure except for one washout in the embankment approximately 900 feet from the extreme south end. This vacancy may require some maintenance. Little has been done. The excess water has been allowed to seek river level. The drainway has thus far done a good job. The headworks and the distribution system put in by the United States government in 1936 has been fully paid for by the Frenchtown Irrigation District. The United States government still pays for some engineering and some maintenance.

The large area of river deposit of 932 feet covered with trees between the east bank of river and the 10 x 15 x 1,880 foot embankment should allow the Frenchtown Irrigation District to operate with care, as is, where is.

Chairman Carey: Thank you Mr. Alexander. Anybody else like to speak to this?

Steve Brown: Hi, my name is Steve Brown, I'm an attorney with Garlington, Lohn & Robinson here in Missoula, and I'm here representing John R. Daily, who has a facility on the Clark Fork River near the Reserve Street Bridge. I do have written comments which I'll submit but just to summarize them real briefly. The primary problem that we have with these regulations as proposed is not necessarily the future effect on future development but how they affect property owners that have structures that are in existence today. A lot of these structures have been built based on a regulatory, a set of regulations that allowed them to be built, and in many cases were built before there were any regulations at all. Now we have proposed rules that would require new permits and approval processes, conditions, all on property that's already been developed. As I look at this from a legal perspective, you know, it begins to get to a point where you have to balance the rights property owners have under the Constitution with the rights that the public has to the environmental benefits that these provide. And there are situations in others states where the regulations have been imposed so heavily-handedly that it ends up being a situation where the county or the state ends up paying money for that. I'm not saying the regulations across the board are that way but they have the potential, on a case by case basis, for ending up in that situation. So we do have some concerns about the effect of these rules as applied to existing development. I also have a number of concerns about the language of the rules in many places, for instance the floodplain still is not very well defined, in terms of what's in the floodplain and what's outside the floodplain, how the map processes are adopted, and those kinds of things. And that's important to private property owners, because as the lines move property can go inside and outside the floodplain and that has dramatic effect on property values. So, I guess just to summarize, I think these regulations need to be tightened up a little in terms of how they affect private property owners and then in a number of places the language also and I will submit my written comments.

Commissioner Kennedy: Mr. Brown, is your written, are your written comments sufficiently detailed so that we understand what you just said?

Steve Brown: Since they're written comments from a lawyer, they're probably going to be unintelligible. But I hope so, that was my intent.

Commissioner Kennedy: If your written comments say everything that you want to say, that's all I'm concerned about.

Steve Brown: Yeah, what I just said summarizes what I've put down in writing. We've offered some suggested changes where we, they might be improved, so hopefully, yes.

Commissioner Kennedy: Thank you.

Chairman Carey: Thank you Mr. Brown. Anybody else like to speak to this? Yes, sir.

Brian Black: My name is Brian Black, I'm a private owner on the Clark Fork about midway between Turah and Clinton. My concern is that good intentions, which I think are operating here, are not quite up to the task that they have set themselves. I think we all know that the main causes of the problems we're looking at are the fact that the river goes up and the river goes down. And that, I would remind you, is not the case for all natural streams. A spring fed stream does not cut its banks because there is no change in the flow, or minimal change, and you've all seen beautiful spring habitat, the kind of watercress and so on along the side and steady banks that don't erode. The best fishing, if you like to fish for trout, okay, is in places just like that where you get really bring spring fed streams and big trout. So the first thing you're dealing with here is the fact that we've got the kind of river that we've got, it's not spring fed and so your doing all the problems that go with the fact that we log and that there's all the runoff issues that augment floods and these are things that are not within your power. I think we're tilting at windmills, is the point I'm getting to, or if you want it more abstractly, we're dealing with imperceptible ills and trying to change them. I don't think it's within our reach to do that. But if we come to lesser matters than the fact of the general morphology, which the river morphology did not mention anything that wasn't moving was a ditch, a spring fed stream is not a ditch, they're beautiful. There is no need for the river to move to be a wonderful, wonderful natural asset. But assume we get to lesser things we come to the government, first of all U.S. government, Interstates and so on. I look down, there's two miles of rip-rap right below my property, right on the right hand side there going down toward Torah. I think you all know that stretch of river. And the river is busily undercutting that rip-rap and as soon as it undercuts enough and the Interstate begins to go into the river, we all know what will happen. The Corps will be here, there will be 150 trucks running up and down the river bank there from a quarry up toward Clinton, okay, dumping in rip-rap. Okay, there'll be a million tons of rip-rap will go in there, I've seen the river go down at Kendall Creek, it's down six feet, okay, that's how far undercut its gone so far under that rip-rap at Kendall Creek there. The people on the opposite side of the river, however, okay, two loads from their rotten old Peterbuilt, okay, of rip-rap are going to be something that gets them into trouble with the law if these regulations pass. I mean, can you look at these things, can you imagine the government operation to save the Interstate when it gets undermined a little and that all this huge amount of stuff going up and down. Okay, great big engineering operation, and some poor fellow across the river, I say, a couple of loads of rip-rap in their old Peterbuilt and he's in trouble with the law. Who do you think you represent, huh? Do you think the U.S. government needs your assistance, okay, is that what you're here for? I think that if you were able to bring a regulation that said, because it's that rip-rap along the Interstate that causes this neighbor of mine to have his problem, that's where it's speeded up the river and it's undercutting the rip-rap, that's why his bank a little further up is in bad problems. I would think your job would be to try, if you could a wee bit, and I don't think you can do much, but I think you could make it easier on that guy by suggesting that the cost of maintaining an Interstate in these circumstances, okay, includes these costs to owners, people that vote for you, okay. That there should be then, as we understand as it were these incidentals, this collateral damage, there's an economic term for this, I forget what it is, it's unintended consequences of people's actions anyway, that they are actually taking of people property, okay. You could, as members of a local government, try to look at the ways in which you could get the Interstate, which is to say the Federal government, Montana government no doubt, to defray that taking, to be able to compensate people whose properties are being degraded because of the problem you're talking about. Accelerating stream flows from extensive rip-rapping, as we have it, and maybe you could even get, you know if it's logging that causes the floods to be bigger, okay, maybe the logging company are responsible. I think that your primary responsibility is really down that line and it's not going to solve the problem. The problem is a huge problem, okay, the forces involved are enormous, but I would love to see a little change of focus there and I think it's asking a lot, okay. I

mean, it's natural to write a regulation and say well, we can't do anything about these guys, okay, you know, the place up there, all the utilities in the world go through, the Interstate. The next one I suppose is the railroad, okay, they rip-rap like crazy, you know, so we can't put them in our regulations. That means you finish up on their side. You finish up trying to defray the incidental expenses that their unintended, their consequences, what these people have done, you finish up putting them on to the private owners that are actually the people that you represent. And I'm, I don't think it's possible, over this particular matter, because it happens all the time in planning as far as I understand it, to do much about that. I think we should begin to look more in that direction so that a matter of holding responsible the major sources that can be held responsible, that's big corporation and big government, local government could try to do some of that and that we shouldn't try. People, we know our river is one that is subject to tremendous floods because of all kinds of non-human conditions and humanly caused by logging and so on, that we shouldn't try to fix what we can't or we finish up, you know, tilting at windmills. So, I think it's extraordinarily difficult to make progress in the line that you're trying to make progress in. I think it would be wonderful if we could, you know, but I do think that if there were progress to be made, it would be made more down the line of holding responsible the larger agencies that are causing our local problems and maybe helping out the local owners, not making life harder for them. Thank you.

Chairman Carey: Thank you Mr. Black. How many other people wish to say something about this? Could you raise your hands? Three or four. Four or five. Okay.

Rick Oncken: My name's Rick Oncken, landowner in the Big Flat area. I guess I kind of don't know which hat to spin around here first. The river came up through no fault of any of my neighbors, it wasn't the fault of the government or anybody, it just came up and, by God, it took 35 feet of my dirt, which I apparently have just donated to the State of Montana in the form of stream bottom. It also took out most of the trees that were there which were 50 to 80 year old cottonwoods. Everything taken in context, I'm also a realtor. But a lot of it is common sense and indeed there are many places up and down the river, after having floated it, sold it, etc., etc., that should not be built on, should not be rip-rapped, should not be messed with at all. There are other areas like where I happen to live where the river chose to change the topography of the area where it didn't do a really good job, it created banks that were unstable and would never be stable because of the way that they cut them. It created a mud flat as far as the river is concerned. It's an area where the sediment just comes and deposits because there is no reason for it not to. It's a great place to catch squaw fish if you're into catching squaw fish. And I did a horrible thing, I rip-rapped. I did it through Land and Water, I spent about 5 months jumping through hoops to have people come out and take a look at it, many of which, by the way, never bothered to set foot on the property. Yet they made decisions about what was going on there having never seen it. The thing I guess I would ask any of the Fish and Wildlife people or Trout Unlimited or whoever to come out and take a look at the property, the only place you can catch any fish right now in that stretch of the river is off my rip-rap. It's the only place there's any habitat for small fish, I've got birds nesting in there, I've planted 800 or 900 trees trying to rebuild what the river took away. I guess not everybody that rip-raps is evil and horrible, but I think the duty's to be looked at on a one by one basis. No, I don't think the whole river needs to be rip-rapped, nor do I think it all needs to be natural. Sometimes Mother Nature is indeed a mother. I guess that's the only comments I have. Thank you for your time.

Chairman Carey: Thank you Mr. Oncken.

Tara Comfort: My name's Tara Comfort and I work with the Missoula Conservation District. We've submitted written comments to you prior to this meeting and I don't want to just read those back over again, you already have copies of them. We appreciate the opportunity to participate with this. I know that whatever comes about with the amendments will directly have an impact on our organization. The Conservation Districts across Montana administer the natural stream bed law known as the 310 Law and we're often in the same area with, you know, overlapping permits along streams and rivers throughout the area. We work closely with Brian on a lot of those. These regulations that people will be under with the floodplain department, they're probably going to be getting one of the permits through our organization also. In the future, as we have in the past, the Conservation Districts are going to continue to consider all sorts of bank stabilization techniques and those will be considered on a site by site basis, based on natural resource concerns and what seems to be the possibilities for that site, what's best for the stream at that site. The areas that we addressed in the past through our comments are still the ones that we are concerned with. Then additional comments have come into our office in the last week or two weeks, since the Missoulian article came out, from individual private landowners. Most of the people that have historically worked with the Conservation District, the predominant sector is private landowners in the agricultural area. And their concerns of some of these regulations and how they would effect agricultural use, future agricultural use of the areas. Mal Alexander, he's gone now, but I know he stood up and he tried to explain all the importance of his ditch system to those ditch users, those water users. And I noticed that he really didn't get to the point that he called me up and was so concerned about these regulations, and I thought on his behalf I'd clarify. He was concerned that their diversion, irrigation diversion, might be considered a levee and that they would no longer be able to maintain that structure that does basically dike along through the floodplain for the purpose of diverting water into their irrigation system. The current definition of a levee, a manmade embankment, usually earthen, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water to provide protection for temporary flooding. You know, provide for temporary flooding should take into account that it's not an irrigation ditch, but his concern was that irrigation structures, ditches, diversions and those type things, would not be included and not be under this term of a levee. And another issue is the prohibited use that, Brian, you and I talked about over the phone, of large scale clearing of native vegetation along a water course that could result in stream bank erosion. And I noticed in the updated, most recent comments from Fish, Wildlife and Parks, they address that issue also. My concern on that, I see in your summary you state that large scale clearing of native vegetation along a stream or river is prohibited, if that is stated more clearly than the way it's stated in your proposed amendment. The proposed amendment at the present time say large scale clearing of native vegetation along a water course, could that be an irrigation ditch, those do need to be cleaned, maintained and they do grow in with native vegetation throughout. The purpose would not, obviously, to be to create a stream bank erosion but if we were calling a concern again from an agricultural standpoint of what that was addressing. And the other issue on that one was farming. Would they be allowed to farm within the floodplain or were there going to be "X" amount of feet back from every waterway that they would no longer have available to clear, work up, plow, plant, use agriculturally.

Commissioner Evans: Thank you for those comments Tara.

Chairman Carey: Thank you.

Roy Handley: Roy Handley, private property owner on the Clinton area. I guess I'm speaking on the agricultural side today and just going through this one of my first things that I did was, like, no equipment in the 50 foot area. I farm within 20 feet of the stream now. Does that mean I cannot plow. I have a, those are the type things that, in my opinion, am I breaking the law by going farming.

Commissioner Evans: Absolutely, Roy.

Roy Handley: Well, that's what I'm getting at here, you know. There are some things in here that are really loose and if somebody comes up and says, oh you was farming 10 feet from the creek, therefore he's a bad guy. I guess if open space is important, we have to find a way and like hard rip-rap, I think there's places for that. I think there's places for the soft stuff. I didn't find it kind of interesting that there's a cost provision of 75% for hard rip-rap and then if you look down in the soft, there's no economics base in there, which I thought was rather, well you can do the soft stuff but if it doesn't meet 75% forget about it, your farm ground isn't important. And I'm not thinking houses right now, I'm thinking farm ground. If economics is placed in this rip-rap category, what's the basis of farm ground? What is it? It's open space, there's got to be some way that I can protect some areas that may need hard rip-rap and soft rip-rap at the same time. Then I see where water diversions, I thinking of like a floor dam with prop up check structures to allow water to go into an irrigation diversion. I have a neighbor that has one of those, does that mean that those would be not allowed within the river itself to allow irrigation water. If that is the case, well, if there is no irrigation water in Missoula County, there isn't going to be any farm ground. What is large scale clearing, you know, me plowing my hay fields, is that considered large scale clearing of native vegetation. You could construe that in that 50 foot. I own a mile of river frontage. Somebody owns 10 feet. If they clear their 10 feet and I clear 100 on mine, is mine large scale and theirs isn't. Let's see, I guess those are some of my big concerns as far as you have to remember, I know what they're trying to do here is to protect infrastructure, but you got to take into account the land based people, myself, who want to farm, but then again if you take away those rights, what's left.

Commissioner Evans: I want to apologize to you for teasing you. I felt I knew you well enough to give you a hard time.

Roy Handley: Well, I've been around here enough, I think you guys know me pretty well, so, I've wore a lot of different hats here in about the last three years. But I guess I just wanted to comment on the ag side of this because I felt rather strongly that there's got to be some common ground here where you're trying to do something as far as houses and I'm trying to protect farm ground. There has to be some equity here. If I'm farming, I don't need a levee but I may need a bit of hard rip-rap. Thank you.

Commissioner Evans: Thank you Roy.

Chairman Carey: Thank you Mr. Handley.

Ladd Knotek: My name is Ladd Knotek, I'm a fisheries biologist with Montana Fish, Wildlife and Parks and I'm essentially responsible for the Clark Fork and many of the waters here in Missoula County. I'm also the representative of the department on the Conservation District on which we serve as an advisory role, so, I work with Tara and some of the supervisors and basically go on every 310 inspection in this County, some of which also require a floodplain permit. We also deal with some of the other stream permitting processing. The comments I'll give you today just kind of reflect the written comments we've already submitted and reflect, basically, the position of the department, and that's that these changes are definitely warranted and timely for the County. They not only reflect the lessons that have been learned here and in neighboring counties, but really nationwide. We have to start looking at these areas and recognizing mistakes that have been made and start to correct them. The expanding growth and development that we're all experiencing really demands some proactive, progressive resource planning and protection. I can't stress enough how important these floodplain riparian areas are for fish and wildlife habitat. By reducing the impacts of human activity on stream banks, riparian areas and river corridors, helps to protect our water quantity and quality. It provides complex places for fish to live, which they need. Rip-rap doesn't do that, it's well documented. It also allows streams to function properly. I just can't overstate that enough. Riparian areas also, that are associated with the floodplain, those are the most diverse and most important wildlife habitats we have. We feel these values are pretty important to the people and the economy of Missoula County. I guess in summary, Fish, Wildlife and Parks supports the amendments and there's going to be some glitches to work out, we all realize that, but I think the base is there, they're flexible and they're going to allow some real strides to be made. So, that's kind of the gist of our comments. Thanks.

Chairman Carey: Thank you. Anyone else?

Eleanor Donish: My name is Eleanor Donish, I've been a Ninemile resident for almost 30 years and I think what I'd like to do is just a short letter that I wrote to Brian, we spoke briefly on the phone. I support your efforts 200%. Revision of the 1975 Floodplain Regulations is long overdue. Here in the Ninemile valley the existing regulations have, in fact, been used to condone streamside projects that defy common sense. I have the following concerns. 1) The existing floodplain mapping badly needs updating for the Ninemile valley. A comprehensive series of aerial photos are available from Joe Vestrie. I'm sure the same holds true for the rest of Missoula County, the very nature of flowing water being to defy human categorizing. 2) What you call softer bank stabilization techniques should not include dumping fill to block the natural flow of water. This needs to be expressly stated in the regulations and requires swift enforcement in the field. As an aside, I cannot stress the word "swiftly" enough. We have seen a lot of damage in the Ninemile Creek area because enforcement was in some cases a year in coming. Often times it will commonly several months before resolution and the damage is already done, it's after the fact. 3) What are the criteria on which softer bank stabilization techniques will be evaluated and by whom will this be done. Of course, disciplinary team approach appears in order for objectivity. 4) Define large scale as applicable to streamside vegetation. What if the removal is done in separate parcels, increase runoff and sedimentation, raise water temperatures, reduce root absorption of potential flood waters, destroy wildlife habitat and so on, and it increases the potential for downstream flooding as well. 5) Review of all permit applications must be a team approach and I refer back to 3. It must definitely include a hydrogeologist and ideally team members would be employed by different agencies and I think you can see where I'm going with that, that we not have a predisposed decision to be made. 6) Utilities should not be allowed to trench across streams, period, never mind discouraging that. 7) Private and public entities, including government, should be discouraged from road building or widening of roads in floodplains. 8) If we are considering the protection of property, then the word property need defining. Are we referring to man-made structures, real estate property? Are we referring to the Columbia Watershed Fishery? 9) Educational materials distributed to streamside landowners must include not only ecological wisdom but clear delineation of which agency has

the responsibility and/or authority for a particular stream or river issue. In other words, is the situation in the stream, streamside, floodplain, etc? Again the confusion caused by those kinds of issues as some kind of demolition or construction, however you want to view it, was beginning to be undertaken, has hindered anything being done about the situation until after the fact and as we all know, that's too late. Special thank you for the bridge construction standards and thanks for the opportunity to input and thank you for undertaking this sorely needed housecleaning. I'd like to, just a word to that after listening to the comments here, I think we do need to be real careful in that it's starting to shape up that, depending on the vested interests, that entity or person may be excluded from the proposed regulations and the reverse, a person or entity that does not have the correct influence will not be heard at all, which concerns me greatly, because across the board I'd like to see all entities being made to consider the nature of the river and act in a way to protect what's best for that natural watershed. Thank you.

Chairman Carey: Thank you. Anyone else like to speak to this?

Mark Spratt: My name is Mark Spratt. I'm a hydrologist, trained through the University of Montana by somebody you may remember, Dick Koseski, and you might be pleased to know that in 1969, we were discussing these very issues in hydrology classes and wondering why people were still building dikes and levees and developing houses on floodplains. It's good that we're finally getting to the point where maybe we're going to consider not doing that. Unfortunately, in the ensuing years people have already developed on floodplains and the regulations as they're proposed severely limit, if not deny, people who have property built within an existing floodplain, as we maybe know them today, the opportunity to protect their property. While it's certainly important to try to maintain the health and the resilience of our streams, similarly I think we have to accept the fact that prior decisions have been made by, certainly will assume considered opinions, that put structures where we'd rather they weren't today. And similarly over that time period, you have to recognize that our design methods and standards have changed dramatically. We use tools that today as a standard practice historically were maybe only available at the universities or large federal facilities like the Corps of Engineers. They had great labs scattered around the country teaming with computers, hydraulics experts who worked on these designs. But if the project wasn't a federal project or merited theirs, while we had local engineering firms and people with substantially less design facilities available to them building these projects. Some of the reasons that things don't look right, don't work right, don't function the way we want them to today is that they were built with a very different set of design standards that we used then. I want to encourage you to modify these regulations to the extent that it allows us to use the most appropriate method to protect existing facilities. I think it's admirable and well past time to try to minimize, or indeed eliminate, construction in flood prone areas. One of the problems with that though is we have a large number of places certainly statewide, and I haven't examined the entire flood map for Missoula County, but I would hazard a guess that there's a number of streams where detailed studies have never been made. And as the pressure builds and people want to develop in these areas, we're going to do detailed studies. Inevitably we're going to find that the floodplain as it's shown on the map is probably not correct. That means that we're likely to have had construction in areas that we shouldn't have been in. The other thing you need to keep in mind is that these projects today get reviewed by an incredible diversity of agencies and technical skills. These agencies include, as we've heard today, Fish, Wildlife and Parks, generally speaking the EPA, DEQ, Fish and Wildlife Service, Conservation District and, depending on circumstances, other agencies as well, that all get their finger in the pie, voiced their comments and examine these projects. One of things that's happening now that's a very definite change in design policy is that we're now trying to not plug up overflow channels when we do bank stabilization efforts. You try to allow for the 100 flood to go where it would like to go so that the streams maintain their flexibility while meanwhile falling back into some kind of base flow channel. Base flow is maybe the two year flow as opposed to base flow as your regulations, which would call a big 100 year. I want to reiterate we need to keep all of the tools available so that in any particular set of circumstances we can apply what's appropriate in that particular instance. Specifically, your provision against levees. I think that levees and dikes still have a place, however rare. I think an absolute prohibition against them is going to put an unnecessary strain on some folks who had no idea that that's what they, the position they were going to be in. The other thing that's unclear to me is why it's necessary to eliminate use of the FEMA established methods for determining whether or not a piece of property is in the floodplain or not and a specific mechanism for removing it from that floodplain. I was not party to the discussions that developed these regs so there may be a perfectly good reason but that method has been in place for a long time and seems reasonable. Its primary intent was to allow for new information or more detailed information to be incorporated into the floodplain mapping process. As the proposed regulations stand it appears that the position is being taken that that's not necessary. So with that I'll close, other than to again reiterate that we would like to at least have a clear-cut mechanism where, with need shown, something like a levee could be incorporated. Thank you.

Chairman Carey: Thank you. Is there anyone else who would like to speak to this? Anyone else at all? Seeing no one, I'll close the hearing. Are there any comments, questions?

Commissioner Evans: I think there are a lot of concerns that have been raised that need to be addressed and I'm not prepared to take action on these today. I think that I'd like to have Brian have about a month or so to address the concerns that have been raised so that I can relate the concern to the proposed regulation and see whether they have been met or have been addressed. That's going to take Brian awhile and I'd certainly like to thank him for his efforts, I think he's done yeoman's work, as has Marnie, in putting these things together. I do think they need to be done but I want to be sure that the concerns that have been raised have been addressed. So I'm going to ask that we postpone this for at least a month.

Commissioner Kennedy: I think that there are some current concerns that were raised and I don't know whether they're addressed in these regulations or not. I think Brian and Marnie as counsel can help us with that. I don't know whether a month is appropriate, it's probably more appropriate to ask the staff that question. But I would make a comment generally about these regulations. The regulations are kind of misconstrued by a lot of people as being restrictive and really if things have not happened that really created damage not only to the public but infrastructure and the environment, well regulations would not at all be necessary. These are really reactions to damage that have been done to those three things. And it's our desire and everyone's desire that that damage be somewhat limited in the future. They are certainly not perfect, but hopefully they will do a job in at least mitigating some of the damage that might otherwise occur without them. So we're hopeful that we're on the right track. Won't answer everybody's questions but I believe it will answer some. So with that I'd ask Brian the question whether or not he heard anything here that he feels was not addressed properly within those proposals and how much time he may need to respond to those were not properly addressed.

Brian Maiorano: I would say that in general I'm very confident that most, if not all, of the concerns addressed, voiced here, are addressed in the regulations. I would like a couple of weeks, I think would be appropriate for us to go through the letters and zip back through and there might be some minor adjustments, minor clarifications. I certainly recognize the concerns that were voiced, we were, they were ones voiced throughout the process and I believe that they are taken care of in there, but I would think a couple of weeks would be fine to do that.

Commissioner Kennedy: Commissioner Evans, is that appropriate for you?

Commissioner Evans: As long as we have time and you're here and I'm here, because we're going to have some times in and out of here. I didn't mean to indicate that everything wasn't already taken care of but it's my own shortfall of not knowing all their concerns and knowing exactly what's in the regs that address that, so I just need some time to have you tell me that. So I would say, I'm gone the last of March and the 15th of March, so and you're gone the 22nd, so...

Commissioner Kennedy: The 8th of March.

Commissioner Evans: The 8th of March is way too soon guys.

Brian Maiorano: Actually, I don't feel that's too soon, I really think we can get you something by next week to start talking about how that addresses everything.

Commissioner Evans: Okay, if that's good for you, that's okay. I just didn't want to hurry you.

Chairman Carey: We'll try for that then, on March 8th. Okay, any other business. Seeing no other business being raised, we're in recess.

There being no further business to come before the Board, the Commissioners were in recess at 3:35 p.m.

THURSDAY, FEBRUARY 24, 2000

The Board of County Commissioners met in regular session; all three members were present. Throughout the day and in the evening, the Commissioners attended Planning Policy Committee Information Meetings regarding Impact Fees with consultant, Paul Tischler.

Claims List -- The Commissioners signed the Claims List, dated February 24, 2000, batch numbers 507 and 509, with a grand total of \$71,577.42. The Claims List was returned to the Accounting Department.

FRIDAY, FEBRUARY 25, 2000

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, the Commissioners met with representatives of the National Institute of Corrections at the new Detention Center.

Claims List -- Commissioners Carey and Evans signed the Claims List, dated February 25, 2000, batch number 511, with a grand total of \$8,818.00. The Claims List was returned to the Accounting Department.

Indemnity Bond -- Chair Carey examined, approved, and ordered filed an Indemnity Bond naming Big Sky Resort as principal for Warrant #356683 issued November 30, 1999 on the Missoula County 2271 Fund in the amount of \$786.45 now unable to be found.

ADMINISTRATIVE MEETING

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

Resolution -- The Commissioners signed Resolution No. 2000-019 accepting an easement from the Maclay Living Trust and Kenne Living Trust for public road and all other public purposes, located in a portion of a tract of land located in the SE ¼ of Section 27, T 13 N, R 20 W, PMM, Missoula County, Montana.

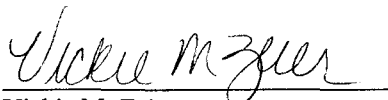
Counter Offer -- The Commissioners approved and signed a Counter Offer from Endobiologics Incorporated for Lot 1B, Block 4 of the Missoula Development Park. The total amount will be \$148,975.00. The closing date shall be June 4, 2000. The document was returned to Barb Martens in the Projects Office for further handling.

Amendment -- Chairman Carey signed Amendment No. 2 for Engineering Services with HDR Engineering, Incorporated to investigate and develop a Mullan Road Corridor Regional Sewer Service Analysis through additional services undertaken in the amendment as described in Attachment I Scope Services, Task 7.0 Mullan Road Corridor Regional Sewer Service Analysis. Also to modify the first paragraph of Section III to read: "Compensation for Engineer's services under this Agreement shall not exceed \$67,516.00."

Other items included:

- 1) The Commissioners discussed the road north of the American Legion Ballpark.

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



Vickie M. Zeier
Clerk & Recorder



Bill Carey, Chairman
Board of County Commissioners

MONDAY, FEBRUARY 28, 2000

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Carey was in briefly before leaving for Phoenix, Arizona to attend a Government Finance Officers Association Seminar through March 1, 2000.

Site Inspection – In the afternoon, Commissioner Evans accompanied County Surveyor Horace Brown on a Site Inspection of Ibey Acres regarding a request to vacate a portion of public access there.

TUESDAY, FEBRUARY 29, 2000

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

ADMINISTRATIVE MEETING

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

Request for Action – The Commissioners approved the proposed street redesign for Kestrel Drive located within Lots 8 and 9, Block 4 in the Missoula Development Park, altering Kestrel Drive from a loop street to two separate loop streets.

Request for Action – The Commissioners approved the Change Order Proposal by Embe Construction – Phase 8 – Development Park, a material price increase for sewer pipe, paying Embe but requesting reimbursement from DJ&A.

Notice of Hearing – Acting Chairman Evans signed a Notice of Hearing on submission to electors the question of authorizing a 3 Mill Levy for Museums in addition to current Levies for the purpose of funding the Art Museum of Missoula and the Historical Museum at Fort Missoula.

Review of the Missoula County Motor Vehicle Department – The Commissioners reviewed and approved the Review of the Missoula County Motor Vehicle Department as of December 31, 1999. The document was forwarded to the Clerk and Recorder's Office for filing.

Pay Increase – The Commissioners signed a 2.5 % Pay Increase for Steve Johnson, Director of Personnel and Labor Relations in a letter to Carol Bishop, Personnel Assistant.

Other items included:

- 1) The Commissioners discussed the Development Park RSID (Johnson Bros.).

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

WEDNESDAY, MARCH 1, 2000

The Board of County Commissioners did not meet in regular session. Commissioner Carey was attending the Government Finance Officers Association Seminar in Phoenix, AZ, and Commissioner Kennedy was out of the office all day.

PUBLIC MEETING

The Weekly Public Meeting scheduled for this date was cancelled as two of the Commissioners were out of town.

Indemnity Bond -- Acting Chair Evans examined, approved, and ordered filed an Indemnity Bond naming Newsweek Education Program as principal for Warrant #011776 issued September 9, 1999 on the Missoula County General Fund in the amount of \$456.00 now unable to be found.

THURSDAY, MARCH 2, 2000

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Kennedy was out of the office until noon.

Claims List -- Commissioners Evans and Kennedy signed the Claims List, dated February 29, 2000, batch numbers 508, 510, 512, 513, 514, 515, 516 and 519, with a grand total of \$118,077.17. The Claims List was returned to the Accounting Department.

Plat -- The Commissioners signed the Plat for Burch Tracts No. 1, a subdivision located in the SE ¼ of Section 7, T 20 N, R 16 W, PMM, Missoula County, a gross area of 37.07 acres with the owner of record being Delores Burch.

Monthly Report -- Chair Carey examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Kathleen Breuer, for the month ending February 29, 2000.

ADMINISTRATIVE MEETING

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

Professional Service Contract -- The Commissioners signed a Professional Service Contract with Barb's Best Cleaning Incorporated to clean three times per week all public and staff non-detention areas of the Missoula County Adult Detention Center and twice a week to clean the Juvenile Detention Center. The amount shall not exceed \$600.00 per month. The term will be February 1, 2000 through July 1, 2000.

Service Contract -- The Commissioners signed a Service Contract with Lindsay Clodfelter, M.A., for 24 hours per week of treatment/intervention services to inmates convicted of sex offenses and confined at the Missoula Regional Prison. Services shall include individual and group psychotherapy, psychological testing and consultation/input as a member of the Missoula Regional Prison treatment team. The amount shall not exceed \$49,920.00. The term will be November 15, 1999 through June 30, 2001.

Amended Condition -- The Commissioners signed Amended Condition 7 of Lolo Greens Subdivision to increase the no-build zone of the riparian management plan to 15 feet on Lots 5 and 6 and to encourage the establishment of riparian vegetation on the western portions of Lots 5 and 6. A 10 foot no-build zone shall also be added to the southern portion of Lot 9. An attachment to the plan should clearly delineate the boundaries of the riparian area. The riparian management plan shall be included in the covenants and shall be approved by the Office of Planning and Grants prior to plat filing.

Other items included:

- 1) The Commissioners discussed the following items:
 1. MACo District 10 and 11 Counties Meeting in Polson on Monday, March 13th.
 2. Proposed amendments to floodplain regulations.

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

FRIDAY, MARCH 3, 2000

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.

Claims List -- Commissioners Carey and Evans signed the Claims List, dated March 3, 2000, batch numbers 524 and 526, with a grand total of \$13,931.63. The Claims List was returned to the Accounting Department.



Vickie M. Zeier
Clerk & Recorder



Bill Carey, Chair
Board of County Commissioners

MONDAY, MARCH 6, 2000

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

Monthly Report -- Chair Carey examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John Odlin, for the month ending February 29, 2000.

TUESDAY, MARCH 7, 2000

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

Claims List -- Commissioners Carey and Evans signed the Claims List, dated March 7, 2000, batch numbers 527, 528, 529, 530 and 531, with a grand total of \$157,299.30. The Claims List was returned to the Accounting Department.

Monthly Report -- Chair Carey examined, approved and ordered filed the Monthly Reconciliation Report for the month ending February 29, 2000, and the Amended Monthly Reconciliation Report for Justice Court 2, Karen Orzech, for the month ending January 31, 2000.

ADMINISTRATIVE MEETING

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

Agreement -- Chairman Carey signed an Agreement with Business Resource Group, Incorporated for a term of 48 months for the purpose of installing and operating coin, credit card and/or other public or semi-public telephones in or on the Missoula County Court House property. The amount will be 15% of the adjusted gross revenue, to include total coin drop, long distance revenue and dial around revenue, less the telephone bill. The document was returned to Teresa Emery at Telephone Services for further handling.

Notice of Hearing -- Chairman Carey signed a Notice of Hearing on submission to electors the question of authorizing a 2 Mill Levy for control of noxious weeds in addition to current Mill Levies, setting the hearing date for March 22, 2000, at 1:30 p.m. in Room 201.

Memorandum of Agreement -- The Commissioners signed a Memorandum of Agreement for the Job Training Partnership Act (JTPA) to provide an employment and training activity called "work experience," which enhances the employability of persons who have never or not recently worked. The wages and workers compensation will be paid by the Human Resource Council. The term shall be from March 7, 2000 through June 30, 2000. The document was returned to Marie Pruitt in Personnel for further handling.

Other items included:

- 1) The Commissioners discussed the following items:
 1. MACo District Meeting in Polson on March 13, 2000.
 2. Budget issues: Susan Reed (Auditor), Rachel V. (Superintendent of Schools), and Fred Van Voulkenburg (County Attorney).

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

WEDNESDAY, MARCH 8, 2000

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.

Refund -- The Commissioners approved a Refund for Janet A. Scott of penalty and interest charges for SUID #1229059, property tax for 1998 (4-plex at 2014 South 12 West). The document was returned to Vickie Zeier, Clerk and Recorder/Treasurer, for further handling.

PUBLIC MEETING - March 8, 2000

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

Public Comment

None

Routine Administrative Actions

Commissioner Kennedy moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$369,703.52. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Bid Award: Tax Deed Searches (Clerk and Records Office)

This is a consideration to award a contract for Tax Deed Title Searches. The bids were opened March 6, 2000, at 10:00 a.m., with the following results:

for	Per Parcel w/Chain of	Per Parcel wo/Chain of	Answer Tax	Hourly Rate
<u>Complex</u>	<u>Title Report</u>	<u>Title Report</u>	<u>Inquiries</u>	
Insured Titles LLC	\$75.00	\$60.00	Yes	\$25.00

Insured Titles LLC was the sole bidder. The bid falls within budgeted expenses for Contracted Services. It was the recommendation of the Clerk and Records Office to award the bid to Insured Titles LLC.

Vickie Zeier, Clerk and Recorder/Treasurer, stated this is a request to award a bid for tax deed searches. Searches are usually requested without a chain which would cost \$60 per parcel.

Commissioner Evans asked what a chain was?

Vickie Zeier stated a chain is all the documents or paper trail of a particular parcel.

Commissioner Kennedy moved that the Board of County Commissioners award the bid for tax deed searches to Insured Titles LLC in the amounts specified, as recommended by the Clerk and Records Office. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Hearing: Approval of Block Grant Expenditures (Sheriff's Department)

This Federal Block Grant is issued yearly to law enforcement for use in the Sheriff's Department in the areas of training, equipment or overtime.

Sheriff Doug Chase stated that in accordance with the requirements to receive the 1999/2000 Federal Block Grant, the department is appearing before the Board today. \$64,668 has been awarded for use as the department sees fit. It can be used for training, equipment, personnel or overtime. As the overtime expenditures with the opening of the new jail have been more than expected, the department wishes to apply all of the amount to assisting with that budget line, given the County's serious budget constraints.

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

Commissioner Evans moved that the Board of County Commissioners approve the expenditures from the Federal Block Grant in the amount stated for the purpose stated by Sheriff Chase. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Continuation of Hearing and Decision: Request to Vacate a Public Access in Ibey Acres (Postponed from March 1, 2000)

This is a petition to abandon "The public access from the north end of Lots 2 and 3 to the south end of Lots 2 and 3 of Ibey Acres located in the SW 1/4 of Section 25, Township 13 North, Range 20 West, in Missoula County, Montana."

The reasons for the request are as follows:

1. There is no access to or from the road that is public; therefore, the City/County has no access from which to maintain it.
2. It would entail hardship upon the landowners on either side of the property if a roadway were brought through to meet up with this easement.

The following landowners have been notified: Timothy E. Ibey, Charles Ibey, Gordon & Geniece Jensen, Chris Deschamps, JoAnn Kidder Trustee, Katherin L. Markette.

Chairman Carey stated the hearing on this matter was still open.

Horace Brown stated that during inspection it was noted that a barn encroaches into the 30 foot right-of-way, which would make it very expensive.

Commissioner Evans asked if the County would have to buy the barn?

Horace Brown stated that would probably be the case, quite a bit of it is within the right-of-way.

Chairman Carey asked if the right-of-way could be shifted?

Horace Brown stated the right-of-way is already set, that would require additional right-of-way from the Ibeys.

Chuck Ibey stated he had an aerial photo of the area. He showed the Commissioners where the right-of-way was located, how close it would be to existing structures and what out buildings would need to be moved if a road were installed. He also pointed out where people lived.

Horace Brown stated the reasoning for this access was to have a road between North Avenue and Mount Avenue. This road would most likely need to be curved to make that connection. The County has a barricade on North Avenue so traffic does not go straight through. There is a high school near by and if the access were opened, it could create problems with traffic speeding through the area. This is a quite neighborhood and the road is not very wide. No one wants this road built. The right-of-way could remain but he felt it would probably never be used. In order to build a proper road, other right-of-way from neighboring property would need to be obtained.

Tim Ibey stated the 30 foot easement from Mount Avenue to their property is a private easement, not a public access. The 30 foot easement is strictly for access to Lots 2 and 3. The access on the Ibey property is 60 feet and public. To construct a road, additional access would be required from Mr. Jensen and from the property contiguous to his.

Commissioner Evans asked Mr. Jensen what his feelings were on this matter.

Mr. Jensen stated he could see no reason why any other land should be involved except the private easement back to Lots 2 and 3.

Tim Ibey, on the aerial map, explained where the 30 foot private easement and the 60 foot public easement were and where a projected road would go.

Ted Deschamps stated that his son owns this property but his son has granted him and his wife permission to live there as long as they like. A one acre tract was split from the original property and when that happened, the 30 foot private easement was granted. If a street were put in this area, it would interfere with his garage, shop and other buildings, and would come within 10 feet of his house.

Commissioner Evans stated that if the County retains the 60 foot easement from Mr. Ibey, to allow for road connection it would require an additional 30 feet of easement from the Deschamps.

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

Commissioner Kennedy stated this request is to relieve a subdivision approval condition that was imposed in 1996. The staff report in 1996 discussed how, not necessarily when, the transportation system in the area might be developed. The zoning in this area is two dwellings per acre. It was the recommendation of OPG at that time to provide for that potential transportation connection. It did not mean that such a road would ever be constructed but did not close the opportunity to the zoning or infrastructure, should it ever be developed. Staff is currently recommended denial of vacating this access. Based on that, he could not support the request to relieve the subdivision of that condition.

Commissioner Evans stated she did not remember any discussion on this access in 1996. If the Board had a clear picture such as was presented today, they would have recognized there were buildings in the area where the road would have to be. She felt it would make more sense to leave the access at 30 feet since there was not 60 feet everywhere. A road in this area would badly impact the neighborhood and she did not feel it was necessary. The people on Rose Crest and North Avenue would object to such a road. Horace Brown has resisted opening North Avenue for at least 20 years. She did not favor retaining the 60 foot easement unless the County was willing to purchase the additional right-of-way from the other properties. There is also the added problem of the buildings within the right-of-way. She would vote to allow the vacation of this access.

Chairman Carey stated this access was an attempt to keep the County's options open for future transportation needs in the area. He saw no reason to disagree with the recommendation to deny this vacation.

Commissioner Kennedy moved that the Board of County Commissioners deny the request to vacate a public access easement through Ibey Acres Subdivision, based on the findings of fact and conclusions of law in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-1. Commissioner Evans opposed.

Tim Ibey made the following comment: "Seems how that there's, I mean, there's no access to that property that's public and there's no access from it, what's happened here is we've tied up a substantial piece of property. One of the reasons this vacation came around was because I want to put a house on the smaller of the lots that my house doesn't fit on. It's a fairly sizeable home. I could get it on there if I squared it up but I want to skew it some so that I can have a view of Lolo Peak through some windows that I'm building into the home. I really don't want to be saddled with having to take care of and landscape a 60 foot strip of ground that somebody can come into and tear completely up. It's a little bit counterproductive to see a 60 foot weed patch sitting next to my house or my brother's house and with no, I mean, I would hate to put a lot of money into landscaping so that someday, somebody could just come in and take it out. My plan would be to have trees and whatnot in that area and it takes a long time to grow trees. It may take you a long time to get so that you put a road through there, but fact being, if I have a 20 year old oak sitting there, or something, I'm going to be pretty disappointed when somebody comes and tears it out. The other option is to not do anything with it, in which case then I've got knapweed and everything else going out there and so at some point in time, I'm going to have to expend a lot of capital to make the place look good so that then it can be torn up for a street. And I feel as though that's dealing with myself and my brother as owners, in an unfair, I mean you're asking us to maintain it but yet you can come in and take it out, and take it away from us and it seems rather unfair to me."

Chairman Carey stated that during his time as Commissioner he has seen many actions that don't succeed the first time but are tried again with a different proposal. The Board is willing to look at something to resolve this matter. This particular request just doesn't work and perhaps a way could be found to make it work.

Commissioner Kennedy stated that he agreed that the lack of planning in the Target Range area has created a big issue. It is not unusual for subdivisions in the Target Range area to have such a condition imposed, even though there is no way to make a through road. Without the easement being granted, it creates the situation of very long dead-end roads that are

not safe. What the Board is trying to do is provide some option for better planning that what has been done in the past. It could be that as this area develops, there may not be a need for that easement or it could happen that there would be a need for it. To foreclose on that option today, when it is known that area is undergoing substantial development, is not in the best interest of the County. He felt the Ibeys would be a bit more objective if this was not their property, he would probably feel the same way they do if it were his property that was being affected. However, with the overall necessary need for a transportation system in the area, foreclosing on that option doesn't seem to be in the best interest of the County right now. It doesn't mean that a road will ever be built there.

Commissioner Evans stated that the County has routinely been accepting 24 foot roads lately, some even narrower. This area would probably never be an arterial road requiring 60 feet. Commissioner Evans moved that the Board of County Commissioners allow the Ibeys to vacate 30 feet of this easement, leaving 30 feet where a road could be built as a compromise.

Commissioner Kennedy stated he could not support such a motion.

Horace Brown stated that 30 feet of easement would not be enough to support a 24 foot road and all the other things that need to go with it in an urban area, such as sidewalks and curb and gutter. The entire 60 feet would probably not be needed, but certainly more than 30 feet.

Commissioner Kennedy stated this is also a utility easement.

Chairman Carey appreciated Commissioner Evans attempt at a compromise for this matter.

Decision: Proposed Amendments to Floodplain Regulations (Hearing held February 23, 2000)

Brian Maiorano, Floodplain Administrator, stated the public hearing on these amendments was held February 23, 2000. Substantial comments were received at that hearing as well as numerous letters before and after the hearing. Since that time, the comments have been summarized and categorized. A good portion of the comments were of general support, urging adoption of the regulations. There were also comments for specific changes or specific concerns. Those have been analyzed to see how they have already been addressed in the amendments or recommendations have been made for specific changes. Those specific changes are included in two memos to the Commissioners, dated March 1, 2000 and March 7, 2000. Most of them are simply wording changes. The third category of comments received were urging adoption of some type of policy that would provide greater protection for rivers, such as no subdivisions in floodplains, greater setbacks, etc., which are beyond the scope of the amendments at hand.

Two of the proposed changes to what was heard at the public hearing deal with bridges, with stream crossings. These were suggested after some discussion with the Montana Department of Transportation. The first is a change in wording regarding the placement of abutments on bridges to allow for anticipated lateral migration of the stream, providing greater flexibility. The second change addresses the concern about the amount of freeboard between the bottom of a bridge and the height of a 100 year flood. The March 1st recommendation was for having a 5 foot clearance and it was thought this was a Federal minimum. After speaking with the highway department and the Army Corps of Engineers, it was determined that is not a general Federal requirement. Both those agencies are comfortable with a 2 foot freeboard. Horace Brown stated that in some instances, he is more comfortable with a 5 foot clearance. The language recommended is: "The applicant demonstrates that there is adequate freeboard to convey ice jams, the 100 year flood and any debris associated with such a flood." That would apply to all streams, looking at the likelihood on each one. The recommended change continues: "On the Bitterroot, Blackfoot and Clark Fork Rivers this freeboard shall be at least two feet above the 100 year flood elevation." The feeling is that on those three rivers, any bridge is a major project and would be done with the cooperation of the state. It would require substantial planning. He was comfortable with leaving the minimum at two feet with more evaluation on a site specific basis. He added that there were many very thoughtful and helpful comments received during this process. It was his recommendation to adopt the proposed amendments dated February 1, 2000 along with the suggested revisions dated March 1, 2000 and March 7, 2000.

Commissioner Kennedy stated he appreciated the work done by Brian Maiorano during this entire process. He had a question about the two foot freeboard, would that be a minimum on only specific rivers or did it apply to all rivers and streams.

Brian Maiorano stated it would be a minimum of two feet for those three specific rivers, on other streams it would be looked at on a case by case basis.

Commissioner Kennedy stated a minimum may want to be established on all rivers and streams and leave any extension of freeboard to the case by case review.

Horace Brown stated that most of the bridges on the Bitterroot, Blackfoot and Clark Fork Rivers would be state bridges, probably not County bridges and the County would not have the responsibility to maintain them. In the County, in most case more than 2 feet of freeboard would be required, because of past experience with logs hanging up on bridges. If the State and Army Corps of Engineers are comfortable with the 2 foot minimum of freeboard, since they have to maintain the bridge, he had no problem with it.

Commissioner Kennedy stated he was asking about establishing a minimum freeboard distance on rivers other than the Bitterroot, Blackfoot and Clark Fork.

Horace Brown stated that on smaller streams, more freeboard is needed than large streams.

Commissioner Kennedy stated that a minimum freeboard that the County is comfortable with, on all rivers and streams, should be established. It should be in writing in the regulations what that minimum is and that after review on a case by case basis, more freeboard may be required.

Brian Maiorano stated that the two foot minimum currently referred to only the Bitterroot, Blackfoot and Clark Fork Rivers.

Horace Brown stated the minimum should be two feet on all rivers and streams.

Commissioner Kennedy asked if there was agreement from the Board with this change.

Commissioner Evans stated that there would not be anything as big as a house likely to come down a small stream, but that could happen on a larger river. Wouldn't more freeboard on bigger rivers be a wise idea?

Brian Maiorano stated a minimum on smaller streams was a good idea.

Horace Brown stated a case by case study was still necessary and should be done by whoever was building the bridge.

Commissioner Kennedy stated his suggested language was to have a minimum of two feet and a review on a case by case basis to determine if more is needed, to be determined by the Public Works Department.

Horace Brown stated he did not agree with requiring the Public Works Department to make the determination. Whoever is building the bridge should pay for the cost of the study.

Brian Maiorano stated that typically if a private bridge is being constructed, an engineering firm will do the design and models. The design can then be reviewed by the Surveyor/Public Works department for comments. He would develop language to incorporate this change.

Commissioner Kennedy moved that the Board of County Commissioners support the changes to the Floodplain Regulations, including the February 1, 2000 draft, the March 1, 2000 memo of suggested amendments, the March 7, 2000 memo of suggested amendments, and the change regarding minimum freeboard just discussed. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

At this point in the meeting, Commissioner Evans left as she was not feeling well.

Consideration: Big Sky Lake Estates Lot A9 (1 lot subdivision) – Seeley Lake Area

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

There will be two considerations of subdivisions today, both of them on Big Sky Lake up in the Seeley Lake area. The first one is Lot A9. The applicant, Big Sky Lake Company (A.P. Hollinger), is proposing to divide one 4.43 acre lot from an existing 150 acre parcel, located on the north side of Big Sky Lake, about 2 miles northeast of Salmon Lake. The other subdivision is a 3 lot subdivision on the south side of the lake.

Big Sky Lake Estates is a master planned recreational subdivision. There were 85 lots surveyed in 1966 but they were not platted. The Board of County Commissioners approved the master plan for Big Sky Lake Estates in 1976 and to date, 80 of the lots have been platted through the subdivision process, generally 2 or 3 lots at a time. The most recent one was Mark Addition, which was approved in 1991.

This proposal, along with the second one for consideration today, are the last lots to be platted on the lake. This current proposal conforms to the master plan, except that Lot A9 is being combined with Lot P, to create one large lot instead of 2 smaller lots. The residences are used primarily for seasonal recreation and there are covenants that address setbacks, number of residences and prohibitions on future subdivisions. There is a caretaker that lives on the property. In addition, the applicant has proposed additional covenants related to driveway maintenance, wildlife and fire standards that apply to these two subdivisions.

The property is unzoned. The 1989 Seeley Lake Area Comprehensive Plan is the current land use document applying to the property. The property is accessed from Highway 83 to Woodworth Road, a County maintained road. There are two roads around the lake, Perimeter Road and Middle Access Road. They are both located within 60 foot private access and utility easements and they are graveled to about a 16 to 18 foot width and maintained by the Homeowners Association. The applicant has requested a variance from the road width requirement for North Perimeter Road.

Lot A9 could be accessed one of two ways, from a new driveway off North Perimeter Road and there is also an existing driveway that enters the property from the west and follows a power line that could be used for access. This existing driveway crosses the lots to the west, but is not used for access by these lots. The plat shows a 20 foot access and utility easement in the location of this driveway. The applicant has requested a variance from the driveway easement requirement.

Seeley Lake Rural Fire District, in commenting on the proposal, recommended some specific driveway standards and Condition 2 requires that these be incorporated into the additional covenants as well as the subdivision standards related to driveways.

There are no pedestrian access facilities in the area near the proposed subdivision and the applicant has requested a variance from the walkway requirement.

The fire district has recommended that the applicant pay a \$100 per new lot fee to mitigate the cost of providing water for firefighting and staff has also recommended an RSID waiver for a public water supply, also to address firefighting water. The applicant has stated there is a pontoon boat with firefighting equipment stored on the lake during the summer season. Homeowners receive training on the use of that equipment.

The property is mostly forested, primarily with Douglas Fir, and the forested area extends down to the lake shore in many places. The southern portion of the property slopes fairly steeply down to the lake with a grade of over 50% in some places. The plat for Lot A9 shows two building areas located on fairly level sites. No building would be allowed outside of these areas. The original covenants include setback requirements from the lake for guest cabins. The buildable area on this lot actually establishes a setback of at least 130 feet from the lake.

The Missoula County Shoreline Regulations, which were adopted in 1998, require a permit for any work within a 20 foot shoreline protection zone. There is a condition of approval that requires some notification on the face of the plat with respect to that requirement. One additional condition is that the recommendation of the Missoula County Weed District that the covenants address noxious weed control.

Staff is recommending approval of the subdivision and the three variance requests subject to six conditions as noted in the staff report.

Chairman Carey asked for public comments.

Ron Ewart, Eli & Associates, developer's representative, was present, as was A.P. Hollinger. He thanked Nancy Heil for her work on the project. Mr. Hollinger has been involved with this community since 1966. There is a very active Homeowners Association on the lake, they meet regularly to make sure all issues are taken care of. They do a good job of maintaining and plowing the roads. Tom Dimkey, the president of the Homeowners Association, has no concerns with either of these two proposals. The proposal meets the master plan for the area. The 20 foot easement through this property is primarily there due to the power line that runs through the property. Power lines should always be covered by a 20 foot easement. The driveway would not continue onto the next property, so it could be located anywhere on the property, it does not have to stay within the easement. There are two buildable areas on the property. It would be possible to build closer to North Perimeter Road, but to maintain the rural feel, they would like to keep houses back further from the road. The people take good care of their properties at the lake. It is a recreational type subdivision, out of 80+ lots only about 5 live there year around.

A.P. Hollinger stated he originally started the development in 1965. He does not own any part of the development currently, his family owns it. These are the last lots owned by Big Sky Lake Company. The reason this many were being done at one time was due to the death of his wife and the need to clear up some matters. Lot A9 was two relatively small lots and by combining them, it offers more privacy and gives the property owner their own private cove.

There were no further public comments.

Commissioner Kennedy moved that the Board of County Commissioners approve the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations for North Perimeter Road to vary from the required 24 foot width to the existing 16 foot width; approve the variance request from Section 3-2(1)(I) of the Missoula County Subdivision Regulations for the private driveway easement to vary from the required 54 foot width to a 20 foot width; and approve the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision; all based on the findings of fact set forth in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Kennedy moved that the Board of County Commissioners approve Big Sky Lake Estates Lot A9 Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Big Sky Lake Estates Lot A9 Subdivision Conditions of Approval:

1. Grading, drainage plans, and erosion control plans shall be approved by the County Surveyor's Office prior to plat filing. Driveway design, including emergency vehicle turnarounds, shall be approved by the County Surveyor's Office and Seeley Lake Rural Fire District prior to plat filing. *Subdivision Regulations Article 3-2 and staff recommendation.*
2. The additional covenants for the subdivision shall be amended to include driveway standards of the Seeley Lake Rural Fire District. *Subdivision Regulations Article 3-2 and Seeley Lake Rural Fire District and staff recommendation.*
3. The following statement shall appear on the face of the final plat:

"Acceptance of a deed for a lot within this subdivision constitutes a waiver of the right to protest a future RSID/SID for public water systems, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land." *Subdivision Regulations Section 3-7(2).*
4. The developer shall contribute \$100.00 per new lot to the Seeley Lake Rural Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants at the time of plat filing. *Subdivision Regulations Article 3-7(2) and Seeley Lake Rural Fire District recommendation.*
5. A note on the plat shall state: "Big Sky Lake and its shoreline are under the jurisdiction of the Missoula County Shoreline Regulations." *Subdivision Regulations Article 3-1(1)(B) and staff recommendation.*
6. The additional covenants for this subdivision shall be amended prior to plat filing to include provision for noxious weed control. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*

Consideration: Big Sky Lake Estates Lots U3, U4, U5 (3 lot subdivision) – Seeley Lake Area

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

This proposal is to take a 4.76 acre portion of Government Lot 6 and divide it into three lots ranging in size from 1.38 acres to 1.69 acres. These lots are located on the south side of Big Sky Lake. The same basic background as mentioned for Lot A9 applies to this subdivision with respect to the master plan, the Comprehensive Plan and general access.

These lots are accessed by Middle Access Road, which runs through the lots. The plat refers to this road as Middle Perimeter Road and it is called Middle Access Road in the application, so part of Condition 1 requires that the final plat reflect the correct name of the road. South Perimeter Road runs along the southern boundary of these lots but is not used for access by these lots.

Lot U3 is served by an existing driveway that crosses Lot U2, which is located to the east. There is an easement across Lot U2 shown as an undefined width on the plat, with the reference to a recorded easement. Lots U4 and U5 are currently served by an unimproved driveway exiting from Middle Access Road. A portion of this driveway would cross Lot U3 and then there is an easement across Lot U4 to access Lot U5, then it loops back around again to access the lower portion of Lot U4. There is a conceptual site plan in the application that shows how the driveways might be laid out.

The applicant, Big Sky Lake Company (A.P. Hollinger), has requested variances for Middle Access Road road width, driveway easement width, the requirement that no lot be split by an existing right-of-way and the 3:1 depth to width ratio for lots. The slope on the southern portion of these lots is over 25% and therefore unbuildable.

The Seeley Lake Rural Fire District recommended some specific driveway standards as addressed in Condition 2. There is also a request for a variance from the walkway requirement. The same conditions are recommended with respect to the \$100 per new lot fee to provide firefighting water as well as the RSID waiver. This property is mostly forested. The southern portion of the property slopes up to South Perimeter Road with grades up to 40-50%. The area directly north of South Perimeter Road is less steep and the plat has designated some no build zones on areas with slopes greater than 20%. As noted on the previous subdivision, the Shoreline Regulations apply to Big Sky Lake. It has been recommended the same condition related to that apply to this subdivision. The Weed District recommended that a revegetation plan be required on this development, since there would be ground disturbance required for grading the driveways, and also that the covenants address noxious weed control.

Staff is recommending approval of the variance requests as well as the subdivision, subject to the six conditions as noted in the staff report.

Chairman Carey asked for public comment.

Ron Ewart, Eli & Associates, developer's representative, was present, as was A.P. Hollinger from Big Sky Lake Company. He thanked Nancy Heil for her work on this proposal. They are in agreement with the conditions of approval.

Commissioner Kennedy asked Ron Ewart if the variance request for Middle Access Road from 24 feet to 16 feet was based on the existing condition of the road?

Ron Ewart stated that was correct, Middle Access Road is approximately 16 feet wide.

A.P. Hollinger stated the reason the access road crosses more than one lot is based on an earlier decision to have one driveway for two people to minimize ground disturbance. The reason the lots are so deep is to create privacy. Middle Access Road is used by a limited number of people in the summer; in the winter it is used as a main access as South Perimeter Road is not plowed. There are only seven people who live there permanently.

There were no further public comments.

Commissioner Kennedy moved that the Board of County Commissioners approve the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations for Middle Access Road to vary from the required 24 foot width to the existing 16 foot width; approve the variance request from Section 3-2(1)(I) of the Missoula County Subdivision Regulations for the private driveway easement to vary from the required 54 foot width to the widths shown on the plat; approve the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision; approve the variance request from Section 3-3(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; and approve the variance request from Article 3-3(1)(D)(2) of the Missoula County Subdivision Regulations which states that no lot shall be divided by a public street, road, alley, existing right-of-way or easement; all based on the findings of fact set forth in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Kennedy moved that the Board of County Commissioners approve Big Sky Lake Estates Lots U3, U4 and U5 Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Big Sky Lake Estates Lots U3, U4 and U5 Subdivision Conditions of Approval:

1. Grading, drainage plans, and erosion control plans shall be approved by the County Surveyor's Office prior to plat filing. Driveway design, including emergency vehicle turnarounds, shall be approved by the County Surveyor's Office and Seeley Lake Rural Fire District prior to plat filing. The correct name of Middle Access Road shall be shown on the plat. *Subdivision Regulations Article 3-2 and staff recommendation.*
2. The additional covenants for the subdivision shall be amended prior to plat filing to include driveway standards of the Seeley Lake Rural Fire District. *Subdivision Regulations Article 3-2, Seeley Lake Rural Fire District and staff recommendation.*

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

"Acceptance of a deed for a lot within this subdivision constitutes a waiver of the right to protest a future RSID/SID for public water systems, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land." *Subdivision Regulations Section 3-7(2).*

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

5. A note on the plat shall state: "Big Sky Lake and its shoreline are under the jurisdiction of the Missoula County Shoreline Regulations." *Subdivision Regulations Article 3-1(1)(B) and staff recommendation.*

6. A Revegetation Plan for Disturbed Sites shall be approved by the Missoula County Weed Board prior to plat filing. The additional covenants for this subdivision shall be amended prior to plat filing to include provision for noxious weed control and implementation of the Revegetation Plan for Disturbed Sites. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 2:30 p.m.

THURSDAY, MARCH 9, 2000

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

Claims List -- Commissioners Carey and Evans signed the Claims List, dated March 9, 2000, batch numbers 532, 533 and 534, with a grand total of \$67,984.34. The Claims List was returned to the Accounting Department.

Monthly Report -- Chair Carey examined, approved and ordered filed the Monthly Reconciliation Report for the Sheriff, Douglas Chase, for the month ending February 29, 2000.

ADMINISTRATIVE MEETING

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

Letter -- The Commissioners signed the Community Based Organization (CBO) Application Letter for FY 2001.

Letter - The Commissioners signed a letter supporting a Resolution to be taken to the MACo District 10 and 11 Counties Meeting in Polson on March 13, 2000 to address the level of funding for mandated food inspection program.

Listing Agreement -- The Commissioners signed the Listing Agreement with Lambros Real Estate extending the listing for 3085/95 Stockyard Road (the old County Shop property) in Missoula to September 9, 2001. The document was returned to Ann Mary Dussault for further handling.

Other items included:

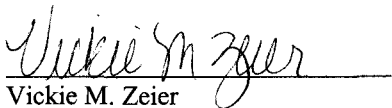
1) The Commissioners discussed the following items:

1. Approval of counteroffer for Lot 5, Block 2, Missoula Development Park from MDA Offer/Review Committee.
2. Application letter to MRA.
3. Approval of agreement with Mountain Line/MR TMA and authorize Chair to sign.
4. Budget issues: John Odlin and Karen Orzech (Justices of the Peace) and Douglas Chase (Sheriff's Department).

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

FRIDAY, MARCH 10, 2000

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


Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chair
Board of County Commissioners

MONDAY, MARCH 13, 2000

The Board of County Commissioners met in regular session; all three members were present. The Commissioners attended the MACo District 10 and 11 Counties Meeting in Polson during the day.

Indemnity Bond -- Chair Carey examined, approved, and ordered filed an Indemnity Bond naming Bob Davis as principal for Warrant #2103 issued February 10, 2000 on the Missoula County General Fund in the amount of \$1,363.25 now unable to be found.

TUESDAY, MARCH 14, 2000

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

ADMINISTRATIVE MEETING

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

Lease Agreement – Commissioners Carey and Evans signed a Lease Agreement (Commissioner Kennedy opposed) with the Missoula County Airport Authority for construction and maintenance of a County Shops complex and related uses. The initial annual rental amount shall be \$19,704.00 for the period March 31, 1997 through March 30, 1998, then will increase according to the annual CPI indexes effective March 31, 1998, 1999 and 2000. The initial term will be 40 years commencing on March 31, 1997.

Amendment – The Commissioners signed a Benefits Plan Amendment for the Missoula County Employee Medical Plan for Transplant Surgery coverage, with the maximum lifetime benefit being \$5,000.00 regardless of the number of donors. The effective date shall be July 1, 2000.

Tax Request – The Commissioners approved the Tax Request for the Missoula Moose Lodge, waiving the taxes provided by MCA 15-6-209 (1) (a) for a portion (3 acres) of Lot 4, Moose Lodge Addition, as per the recommendations of Mike Sehestedt. Copies of the document went to Vickie Zeier and Mike Sehestedt for further handling.

Modification – Chairman Carey signed a Modification between Missoula County Partnership to Strengthen Families and the Montana Department of Public Health and Human Services, modifying Section 3, Services to be Provided of contract number 200023Part0011 and correcting the number of families from 40 to 89 that the Missoula County Partnership to Strengthen Families will serve.

Request for Action – The Commissioners approved a Request from Garden City Harvest for a zero percent interest, deferred payment loan to assist them in covering operating expenses during the Spring. The amount will be \$5,000.00 to be repaid in three equal installments on August 1, September 1 and October 1, 2000.

Addendum – The Commissioners signed an Addendum to the Buy/Sell Agreement between the Missoula County Development Park and Donald Snively for Lot 5, Block 2 of the Missoula Development Park as follows:

- 1) Closing date extension to May 15, 2000 with Lots 4 and 5 of Block 2 being closed together.
- 2) Final sales price on Lot 4, Block 2, shall be \$112,000.00.
- 3) Seller shall complete construction of Expressway Boulevard no later than November 1, 2000.
- 4) Seller to carry the balance of \$95,000.00 of the purchase price on a Promissory Note.
- 5) Contingencies to the closing shall be that the Seller will install all utility services by June 7, 2000 at their own expense, Buyer shall submit to Seller by March 16, 2000 the site and building elevation plans for approval.
- 6) Buyer to obtain necessary government approvals of the project.
- 7) Title shall pass to Buyer at closing free and clear of all liens and encumbrances, excepting CCRs created by Seller, a 10-foot utility easement, a 20-foot utility easement and applicable zoning and building ordinances.
- 8) Buyer acknowledges he has received a copy of the Butler Creek Hydrology Study and understands imposed limitations.

The document was returned to Barb Martens for further handling.

Request for Action – The Commissioners approved a Request from Burke Subdivision for Lease or Rent to utilize two homes as dwelling units on a 5.24-acre property described as Lot 23 Ponda Rosa Acres in the NW ¼ of Section 8, T 14 N, R 22 W, PMM, Missoula, Montana.

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

PUBLIC HEARING - MARCH 14, 2000

**HEARING ON SUBMISSION TO ELECTORS THE QUESTION OF AUTHORIZING A
THREE (3) MILL LEVY FOR MUSEUMS IN ADDITION TO CURRENT MILL LEVIES**

Hearing held at the Art Museum of Missoula, 335 North Pattee, Missoula, MT

59802

The Public Hearing was called to order at 1:30 p.m. by Chairman Bill Carey. Also present were Commissioner Barbara Evans and Commissioner Michael Kennedy.

Chairman Carey: Looks like we're ready to go. I'd like to call this public hearing to order. We are here to hear the public's views on whether or not the County Commissioners should put a three mill levy on the June ballot to raise money for this museum as well as the Historical Museum. I don't think I should prejudice the proceeding with any of my views right now on our County's budget situation. So, I'll just go ahead and ask for anybody to come on up and share your views with us. I will caution you just right away from the start that apparently there was a typo in the newspaper referring to some sort of casino hearing. This is not about casinos, this is about the Art Museum and the Historical Museum.

Ed Heilman: Commissioners, my name is Ed Heilman and I asked to be first because I have a dental appointment very shortly. I would rather do this to be honest with you. I'm here today representing three people essentially, one is myself, the other is my good wife who is otherwise committed today and third, on the part of the Society of American Foresters. These are somewhat different interests, and perhaps different viewpoints. My wife and I have been involved, one way or another, with the two museums for 25 years. Between us we have served in different capacities all the way from ditch digger to chairman of the board of trustees. Incidentally, my wife is the chairman, I was the ditch digger. At the Historical Museum we have done, I say we, my wife and I have done, cleaned out bat dropping from the false ceiling that was there at one time and on up to this most recent weekend, other activities. I think it's safe to say that between us we know the museum literally from the ground up – museums, plural. On behalf of my wife and I, I would urge you Commissioners to do indeed put this measure on the ballot because it's in the light of a County financing that seems like the only reasonable way museums can continue their existence beyond this fiscal year. Separately, on behalf of the Society of American Foresters, which is the foresters professional society, I'm a member of that as are others, and among us we have been involved in the Historical Museum primarily for 20 years. In that capacity, the Society of American Foresters and its partners, mainly forest industry, but also both Federal and State forestry agencies, have contributed probably well over \$100,000 in contributed services, materials, labor and so forth. As an example is the delivery of that steam locomotive from where it was at Bonner to its present location at the Historical Museum. If you think about the effort and the cost involved in moving that locomotive, that's just one small example of what the Society of American Foresters has been able to contribute. I think it's safe to say that Society of American Foresters is extremely interested in the museums – plural – and we, again, would urge you to put this measure on the ballot. And finally, just as a citizen, I think it's safe to say that both museums have a very diverse clientele, not only from the Missoula area but the other parts of the County and even other parts of the state, and it's to the credit of Missoula County, in this case, that we've been able to offer those attractions and I would urge you again to put this measure on the ballot.

Jim Leiter: My name is Jim Leiter and I'm a resident of Missoula County. I didn't have the good fortune to be born or raised in Missoula County but I do have the good fortune of living here now. I was fortunate to be raised in a community that was rich in museums. We had a great American history museum, a great natural history museum, we had a military museum and a world renowned art museum. As a boy, I can recall Cub Scout tours, school class tours, I think every year we went to at least one, if not more than one, museum in our community. I think it was really important in my upbringing to have that kind of exposure as a child. I helped support this through the Chamber of Commerce to encourage the Commissioners to put this on as a levy issue and in the Chamber we talked a lot about the value of museums in the community in bringing in tourism and bringing in commerce. But to me personally, I think museums and art museums go deeper than that, it's more of a sense, a way for us all to develop a sense of where we came from, who we are in our community today and where our community is headed. I think the value of the museums in the Missoula area is for our children, probably more than us, in giving them that sense of where they are, of what our community is about, and where we all came from. I'd encourage you to consider, really consider putting this on as an issue and let the citizens decide on this because I think it's important for all of us and our children to help build this as a home for all of us.

Fern Hart: I'm Fern Hart, a Missoula County resident. I'm not embarrassed to talk about how budget has affected Missoula County. I have observed four legislatures when the County's ability to tax, from its loss of tax base to its limit on mill levy, has been consistently reduced and the County must provide basic mandated services, that is what government does. We've grown, but growth has not made the difference. Missoula County's bursting at the seams. We do have wonderful people with the ability to respond, people who have expressed need and love for the things that they want to see in Missoula County, but the tax base is simply not there to support it. As I thought about this, I know that it's important for us to have streets and roads and law and order and that's basic. But many other things are basic too. We don't live by bread alone. Museums feed our soul and it's that which is the important part and the distinctive part of Missoula. There are streets and roads everywhere and there's law and order in other places but there's only these museums that are Missoula. So I would urge you to support this levy and put it on the ballot. Thank you.

Tom Boone: My name is Tom Boone and I'm here speaking on behalf of my wife and me and also as a member of the Advisory Board for *Yes to Museums*. First of all I want to say that I think on behalf of the people of Missoula, we have to thank the government, the County government, for having provided us with the museums that we have had. I think we have been most fortunate that we have been able to have the governmental support. I think this is probably a recognition that government has to take care of the essential governmental services and maybe doesn't have quite the ability to be able to fund things such as museums and that we have to look elsewhere for the funding and so, I guess in recognition of that, we would say, yes, let's put it on the ballot and let's go to the people and let's ask them to respond. If they are like me, then they will say this is something that adds to the quality of life, the diversity, the rich diversity I think that we have as citizens here in Missoula. I was fortunate to be born and raised here and have lived here all of my life, so I've seen Missoula and what it is and I think I know a little bit about what it offers to people. It really offers much more than what we talk about, the scenery and the outdoor recreational opportunities. I mean, we have great educational opportunities here, we also have great cultural opportunities. I think these two museums are a rich part of that and I think that's what makes it so desirable, because we do have so many opportunities and we can see all different aspects of our community represented in the museums, as well as in our educational institutions. We're fortunate, we have a great symphony, we have the Choral Festival and we have the Children's Theater. It's just great. There are opportunities for everyone and I think this is an opportunity that Missoula has to keep this museum going and also the Historical Museum. I'll change just a little bit in my focus on this also. I've been involved in a number of non-profit organizations and I have advocated, sometimes successfully and sometimes not, that these organizations need to establish endowments to ensure their long-term viability so that they don't have to rely on governmental programs to be able to offer services to the community. I think that people like Sue Talbot and others have recognized that with the Montana Community Foundation and with the tax credit law that has been passed, encouraging people to utilize the endowment, as I said, to ensure the long-term viability of the services that are being provided. I look at this as a possibility of Missoulians endowing these museums, a private endowment for the long-term viability of the museums. I guess in that spirit I would say, let's put this on the ballot and let's give the Missoulians a chance to respond to that. Thank you.

Mac Palmer: I'm Mac Palmer and I'm very much interested in both of these museums but I am also the Vice President of the Friends Board at the Historical Museum. I'm a new person here in Missoula, I've been here about seven years now. I came here because my wife got a job on the faculty at the University, so education is clearly important to us. And both museums are clearly a very important part of the educational offerings of this community. School groups come to both of them on a regular basis, but not only school groups, adults come to them and get educated while they're being

entertained and finding the richness of the culture of this part of the country. My mother-in-law was a professional artist, so an art museum is something very close to me. I have been personally involved with operating railway museums since the mid-1940's and I presently am the one that takes people into the cab of the locomotive out at the museum. I'm coordinating the rebuilding of the one street car that remains from Missoula. These are things that bring people to our community. Whenever I have friends, I take them to museums, not only in this community, but in others where I've lived. People do come to communities for the cultural affairs, so that having museums is very basic to being a community that attracts people both for temporary visits and for long-term visits and to come and to live. So please do support both of our museums.

Gary MacFadden: My name is Gary MacFadden, 509 Hill Street, here in Missoula. I'm speaking today in a dual capacity, a dual role, as a board member of the Art Museum of Missoula and as the Executive Director of the Adventure Cycling Association, which has been headquartered here for 25 years. I know you're all enthusiastic cyclists. Our mission at Adventure Cycling is to encourage 35,000 members to use their bicycles to discover America at a pace that's slow enough to really take in the diverse experiences that our nation offers. And when they reach their destinations, they like to find things to do, experiences that can flesh out and illuminate their travels. They seek out museums, fairs, historical and cultural activities. And in this they are not unlike thousands of travelers who partake in what is today called cultural tourism, which is becoming an increasingly important part of tourism and the tourism industry. The desire for historical and cultural experiences is a significant motivator for travelers and a trend that is likely to continue. It's no secret that tourism, and especially cultural tourism, is on the rise in Montana. Between 1991 and 1998, tourism increased in this state by 23% and in 1998, visitors deposited more than \$166 million into the economy of Missoula County alone. These visitors mostly have arrived by automobile, probably looking for the same things that my two-wheeled travelers are looking for. They are looking for developed experiences such as festivals and museums and, of course, outdoor experiences. In a national study completed just last year by Strategic Marketing and Researching, Inc., 35% of the respondents noted that they planned their vacation travel around the availability of museums and cultural amenities. What about the person who lives in Missoula? Are the museums important and useful for them? A September, 1999, study by the Institute of Tourism and Recreation Research at our own University of Montana would suggest that the answer is an emphatic yes. We might think of ourselves as totally involved with the adventuresome outdoor activities so readily available to us here in Montana, but this study of resident recreation showed that a far greater number of Montanans use the museums and other cultural events more often than they take part in fishing, backpacking, hunting, skiing, boating and other outdoor pursuits. Of the 38 activities studied, museum visitations ranked as number 10. To put that in perspective, fishing ranked as the number 15 activity, golfing was the number 22 activity and downhill skiing ranked number 31 of 38 activities. One of the things our visitors have expressed over the years as they've come into our headquarters is that they enjoy the sense of community when visiting Missoula. This is where entities such as the Art Museum and the Historical Museum rise to such importance. Bob Brown, the Executive Director of the Fort Missoula Museum, has expressed the duality of the two museums very succinctly. The Historical Museum represents the memory and the Art Museum, the soul of the this community. Without these thriving museums, both the visitor and the resident would lose much of what Missoula represents. Thank you.

Jeff Hainline: Good afternoon, my name is Jeff Hainline. Carson asked me to say a few words when I came in the door which caught me off guard a little bit, so I'll wing it. I'll say I concur wholehearted with a number of things that I've heard that the Art Museum can nurture all generations, the Historical Museum can preserve things that were here when I was a kid and before, that are rapidly changing. I had grown up in Missoula but really wasn't much in the way of art museums, or at least I wasn't exposed to it, but about 10 years ago in Albuquerque I was fortunate enough to go and see the Armand Hammer collection, "Five Centuries of Masterpieces," that was showing. It was a wonderful experience, I wish that I would have had something like that as a child. I think that for children of all ages that to see something like that or to see good art is something that certainly nurtures and gives them something positive to look forward to and hope that you'll endorse this. Thank you.

Commissioner Evans: Could we just have a show of hands or something since you're all too shy to get up and speak. How many want it on the ballot?

Everyone in the audience raised their hand.

Ed Heilman: It's kind of curious, isn't it, it's interesting that people show up here for something instead of against it.

Suzette Dussault: Since there are no takers, I'll be glad to take. And also to say thank you so much for allowing us to come and voice our excitement about this possibility. I'm Suzette Dussault, 601 North Avenue. I am delighted that we are going to fully fund the museums that offer us so much and give so much to our community in a way that they need to be funded and I honor those people who have worked for years providing this service to our community under real constraints as far as budget. We know that when the community is asked, they will give generously. I'm thinking in terms of the schools, when asked, the community does support those things that they know that are important to them. I just want you to wholehearted endorse this request. Thank you.

Chairman Carey: Anything else? Then I'll close the hearing. Excuse me, I'll reopen the hearing.

Bill Zader: I'm a little shy, I guess. I'm Bill Zader and I've been a taxpayer in the community for 20 years. I think when my money comes in you can see the tears on those dollars, but I'm very much in favor of you allowing this to go up to the voters to allow the community to vote on this issue. It's very important to myself and to my wife, Judy Rivers. I guess I'd kind of like to know if you could answer, what happens if the levy doesn't pass? What are our options? What's on the agenda at that point? Thank you for your consideration and support of this.

Chairman Carey: Thank you Bill. Well, I can tell you that we will ask the department heads at the County to tell us what will happen in their departments if they had to cut anywhere from 8% to 15% out of their current budgets. So we are faced with a very dire situation of the County budget. I can't tell you for sure what would happen to the museums, but it wouldn't be good.

Louise Ross: I'm a little shy also. My name is Louise Ross and I live on Polaris Way and I'm President of Art Associates of Missoula and I'm going to probably be starting my fourth term and I'm trying to encourage the organization to start a thing on term limits. That's another story. As many of you are well aware, Art Associates has

been a part of Missoula for, I think we're celebrating our 22nd year and started just after the museum came into being and for the last 13 years we have supported and funded and organized the 5th Grade Art Experience program. Last year we helped over several hundred, in fact, almost a thousand 5th graders to come through and see the Miriam Shapiro exhibit in the fall and we're looking forward to another exhibit with the museum this coming fall. Our program and our members are very dedicated to the Art Museum and many of them also to the Historical Museum and I would encourage you to okay this project to be on the ballot for the citizens of Missoula to vote for and we will certainly encourage them to vote *Yes to Museums*. Thank you.

Andrea Clark: Andrea Clark, 605 Dickinson. I'm a new homeowner in Missoula and I can't wait to raise my taxes for museums.

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

Commissioner Evans: I'd like to thank all you folks in hearing about the cultural heritage of our community and to get active and put up the signs. They are the sum total of our history and it's important the we maintain them. Some of it's good history, some of it's not quite so good, but it's still all part and parcel of the fabric. There are lots of roads in town, I dearly love roads, but a museum without meeting the basic things is not a very rich place. And we need the cultural beauties of our museums, of our libraries, of the outdoors, the things that are really important to us. And I think the public thinks that too. I just hope that they know that the reason we're short of money is because every time the legislature meets they add mandates on us that tell us that we have to add new services, but they don't give us new money. They don't allow us to raise the taxes for the new services and pretty soon the money that we are getting is earmarked money that we've been fortunate enough to get by going after grants to provide services where otherwise we can't. If all we have is just our basic budget, there would be no money for the things that we provide in the way of welfare services and the other things that we get grants for. So while I support the roads and I support all the basic things, when anyone wants a police officer, they don't want to know that there's another service available, they want the police officer. And I want us to have all those basic services, but I also want us to have all the cultural things that make this a great place to live. So, I certainly will be voting yes on the ballot even if it raises my taxes \$11, I think I can afford that. And I encourage everyone else to do the same and I thank all of you for all your hard work. I think together we'll get it passed.

Commissioner Kennedy: It's interesting what Barbara said and what happens as a preface to my remarks as you hear witness to a place where Barbara and I, who are diverse sometimes politically, really join in this effort. We both wholehearted support this kind of thing.

Commissioner Evans: If he was going to say we were joined at the hip, I was going to argue that.

Commissioner Kennedy: I think, though, that there's a perspective about the budget that is very real, but also needs to be clarified somewhat. I want to clarify it by talking a bit about what happened in the last couple years with respect to aging services. The aging services mill that we had was not unlike the mill that we allocate for art museums, it was permissive. It wasn't something that was necessary or entitled, by any means. And what we did when we placed that on the ballot, we asked the voting public whether or not we should remove that word "permissive" from it and acknowledge that this was a very, very necessary service within our community. And as we know, that succeeded. And so what it did, it added a measure of stability to the overall funding that we all know is important for aging services. This is much the same. We don't know whether there will be a downside in this budget with respect to the museums or not. We suspect there's going to be an impact no matter what happens here but we do know that our cultural heritage has evolved over more than a hundred years and its come to the place where we need to do something in addition, and, as Andi said, it means even raising taxes. If we believe in that we will vote for this to raise taxes. There's real a very, very strong threat in the overall cultural weave of our community and I just wholehearted support it and I just can't say enough about it. And I'm going to work very hard and am also in favor of this. So, I would urge everyone to do the same.

Chairman Carey: We have the resolution in front of us and I wondered, should we read it and then see if there is a motion to support?

**TO SUBMIT TO THE ELECTORATE THE QUESTION OF A PERMANENT INCREASE IN
PROPERTY TAXES OF UP TO THREE (3.0) MILLS FOR FUNDING THE ART MUSEUM
OF MISSOULA AND THE HISTORICAL MUSEUM AT FORT MISSOULA**

WHEREAS, the Board of County Commissioners is authorized by MCA § 7-16-2205 and MCA § 15-10-420 to levy up to 3 mills for funding the Art Museum of Missoula and the Historical Museum at Fort Missoula; and

WHEREAS, MCA § 15-10-402 caps the dollar amount of taxes levied by Missoula County; and

WHEREAS, the County is authorized to levy additional taxes under MCA § 15-10-420 if the additional taxes are approved by the voters; and

WHEREAS, the Board on March 14, 2000, after due public notice, held a public hearing on the question of whether to submit to the voters the question of authorizing an additional levy for museum funding;

NOW, THEREFORE, BE IT RESOLVED that the following issue be submitted to the qualified electorate at the primary election to be held June 6, 2000.

Is there a motion?

Commissioner Evans: I'll move that we pass it.

Commissioner Kennedy: Second.

Chairman Carey: It's been moved and seconded. All in favor, say "Aye."

Commissioner Kennedy: Aye.

Commissioner Evans: Aye.

Chairman Carey: Aye. Alright. Well, this is just the beginning. There's the possibility that the weed, a very strong possibility that there be a 2 mill levy on the ballot for weed control, research and so on, the parks may have a 2 mill levy on the June ballot. So, hopefully, everybody can educate their issues well enough so that the public understands that it's supporting these kinds of mills levies, these kinds of tax increases, are, in fact, beneficial in many, many ways to this community. So thank you for being here and now the thing to do is to get out and work hard and make sure this passes. Thank you. We're in recess.

At the end of the meeting, the Commissioners signed Resolution 2000-020 which allows the mill levy question of support for the Art Museum of Missoula and the Historical Museum at Fort Missoula to be put on the June 6, 2000 ballot.

There being no further business to come before the Board, the Commissioners were in recess at 2:00 p.m.

WEDNESDAY, MARCH 15, 2000

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

Claims List -- The Commissioners signed the Claims Lists, all dated March 14, 2000, batch numbers 537, 539, 541, 542 and 543, with a grand total of \$272,972.55; batch number 540, with a grand total of \$15,060.85; and batch numbers 538 and 544, with a grand total of \$32,002.76. The Claims Lists were returned to the Accounting Department.

Agreement -- Chairman Carey signed an Agreement between Missoula County Public Schools and Missoula County Health Department (as a component of the Safe Schools Grant to School District 1) to provide one full-time Neighborhood Nurse to make home visits in the Franklin Elementary School neighborhood. The term shall be January 1, 2000 through September 30, 2000. The amount will not exceed \$35,325.00 and will be paid on a quarterly basis. The document was returned to the Health Department for further handling.

Memorandum of Agreement -- Commissioner Carey signed a Memorandum of Agreement between Child Care Resources and Missoula City County Health Department for the 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. Yvonne Bradford will be the Administrative Officer for this Agreement. The term shall be March 15, 2000 through June 30, 2000. The total amount will be \$16,900.00, contingent upon the availability of local tax revenues from Missoula County.

Contract Order -- Chairman Carey signed Contract Order No. 00-07-3-11-269 with the Montana Department of Public Health and Human Services:

- 1) to provide coordination and arrangements for an injury prevention conference for safety advocates and other stakeholders which provides tools and training in data-driven injury prevention programs with emphasis of reducing injury morbidity and mortality at the regional and community level,
- 2) to prepare and submit to the Department EMS and Injury Prevention Section a final report summarizing services provided.

The term will be March 15, 2000 through August 1, 2000. The total amount shall be \$4,000.00 upon the signatures of the Agreement and receipt of documentation of progress on Section 4, and \$1,000.00 following completion of the project and submittal of a final report as identified in Section 4. The document was returned to the Health Department for further handling.

PUBLIC MEETING - March 15, 2000

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Michael Kennedy. Also present were Commissioner Barbara Evans, County Clerk & Recorder/Treasurer Vickie Zeier and Deputy County Attorney Colleen Dowdall. Chuck Wright, Land Surveyor, Surveyor's Office, attended the meeting for County Surveyor Horace Brown, who was on vacation. Chairman Bill Carey was attending another meeting.

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$388,020.50. Acting Chair Kennedy seconded the motion. The motion carried on a vote of 2-0.

Hearing: Request to Vacate a Portion of Lodge Way (Double Arrow Ranch)

This is a petition to abandon "A portion of Lodge Way from the northeast boundary of Arrowhead Subdivision, Phase 1, to the end of said Lodge Way at its intersection with the former location (now vacated) of Double Arrow Road located in Section 11, Township 16 North, Range 15 West, PMM, Missoula County, Montana (Double Arrow Ranch)."

The reasons for the request are as follows:

1. This portion of Lodge Way was never constructed, and was originally planned to connect Lodge Way back into Double Arrow Road.
2. Double Arrow Road has since been relocated, and no longer exists in the location where Lodge Way would have connected thereto.

The following landowners have been notified: Double Arrow Enterprises Inc.

Acting Chair Kennedy opened the public hearing.

Ed Bezanson of the Double Arrow Resort stated that he is in favor of this request to vacate for the reasons stated in the petition. He was present to answer any questions the Commissioners may have.

Chuck Wright stated the Surveyor's Office has no problems whatsoever with this vacation request.

Acting Chair Kennedy stated the process for this request included today's public hearing followed by a site inspection by one Commissioner and the County Surveyor. After the site inspection, they will make a recommendation to the Board. The date for the decision would be March 29, 2000.

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

Hearing: Request to Vacate a Portion of Old County Road (Double Arrow Ranch)

This is a petition to abandon "A portion of the old County Road/Highway right of way from the southwest boundary of Book 373 (M), Page 1929, to the southeast right of way of Double Arrow Road located in the northwest 1/4 of Section 14, Township 16 North, Range 15 West, PMM, Missoula County, Montana."

The reasons for the request are as follows:

1. This is a portion of an old highway/county road right of way that was deeded to Missoula County in 1929 (Book 103 of Deeds Page 286 - Deed Exhibit #38), which has since been replaced by a new highway in more recently acquired right of way.
2. As this road no longer exists, there is no reason to retain the right of way.

The following landowners have been notified: Double Arrow Golf Resort and The Meadows Property Owners Association Inc.

Acting Chair Kennedy opened the public hearing.

Ed Bezanson of the Double Arrow Resort stated that he is in favor of this request to vacate for the reasons stated in the petition. He was present to answer any questions the Commissioners may have.

Chuck Wright stated the Surveyor's Office has no problems whatsoever with this vacation request.

Acting Chair Kennedy stated the process for this request included today's public hearing followed by a site inspection by one Commissioner and the County Surveyor. After the site inspection, they will make a recommendation to the Board. The date for the decision would be March 29, 2000.

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

Other Business

Keith Belden stated he was an engineer with Morrison and Maierle. The company is locating a new office in Missoula. Within the next month to six weeks they should be fully staffed with up to six people in the office locally. The office is located on Clark Street, one block east of South Reserve (near Shopko). They will provide services principally focused on municipal, land surveying and structural engineering, with some development work. They are doing the wastewater treatment plant for the City of Missoula, with a construction budget of approximately \$15 million. They would also like to target some of the school projects that will be done as a result of the passage of the recent school bond election. They have picked up quite a bit of business so far and feel that having an office in Missoula will be good for them.

Acting Chair Kennedy welcomed Mr. Belden and Morrison and Maierle to Missoula.

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

THURSDAY, MARCH 16, 2000

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Kennedy was out of the office March 16th and 17th.

Claims List -- Commissioners Carey and Evans signed the Claims Lists, both dated March 16, 2000, batch numbers 547, 549 and 551, with a grand total of \$89,705.09, and batch number 550, with a grand total of \$72,981.30. The Claims Lists were returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Resolution -- The Commissioners signed Resolution No. 2000-021 to amend Resolution Nos. 75-20 and 75-23: flood plain regulations for Missoula County.

Service Agreement -- Chairman Carey signed a Service Agreement with US West Communications, Incorporated for provision of US West DS1 Service for the Extension Office. The term shall be 84 months from the latest signature date or from March 31, 2000. The amount shall be \$217.14 per month with a nonrecurring charge of \$1200.00. The document was returned to Teresa Emery in Telephone Services for further handling.

Agreement -- Chairmen Carey signed a Missoula County Employee Pass Program Agreement with the Missoula Urban Transportation District providing free bus service for County employees. The term will be April 1, 2000 through March 31, 2001. The amount shall be \$ 8,600.00. The original document was returned to Mountain Line and one was recorded.

Modification of Agreement -- Chairman Carey signed a Modification 01 of Agreement with the Montana Department of Environmental Quality for the purpose of providing local sanitary review of minor subdivisions and to extend Section 2 entitled "Dates to Commence and Complete Services," part (1) through June 30, 2000. The document was returned to the Health Department for further handling.

Other items included:

- 1) Wally Sept and Steve Bisson were reappointed to three-year terms on the Big Sky Park Stewardship Committee; and
- 2) Keith D. Peterson was appointed to a three-year term as a Trustee on the Seeley Lake-Swan Valley Public Hospital District Board.

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

FRIDAY, MARCH 17, 2000

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was out of the office until noon. In the forenoon, Commissioner Carey attended a Mental Health Board Meeting held at the Share House on Wyoming Street in Missoula.

Plat and Improvements Agreement and Guarantee -- The Commissioners signed the Plat for Lolo Greens, a nine lot subdivision located in the SE ¼ of Section 26, T 12 N, R 20 W, PMM, Missoula County, a total of 129,193 Square Feet with the owners of record being Duane and Shirley Pettersen. The Commissioners also signed the Subdivision Improvements Agreement and Guarantee for the public improvements yet to be completed, with an estimated cost of \$42,357.70, secured by a Letter of Credit issued by First Security Bank, with all the improvements to be completed no later than two years from the date of filing of the plat of Lolo Greens.

Subdivision Improvements Agreement and Guarantee and Escrow Agreement

The Board of County Commissioners signed a Subdivision Improvements Agreement and Guarantee between Missoula County and Lisa Boyer, owner of Boyer Subdivision, amending the original Improvements Agreement to provide different collateral in an amount recognizing that some of the improvements have been completed. The paving remains to be completed and is to be done by December, 2000, secured by cash in the amount of \$13,190.00 withheld from the sale of Lot 2. Chairman Carey also signed an Escrow Withhold Agreement for the purpose of escrowing the sum of \$13,190.00 to pay for and help insure completion of the improvements, which are to be completed by December, 2000. The documents were returned to First American Title Company for further handling.


Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chair
Board of County Commissioners

MONDAY, MARCH 20, 2000

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Kennedy was on vacation March 20th through the 22nd.

Audit Exit Conference -- In the afternoon, the Commissioners and Jane Ellis, County Fiscal Officer, met with representatives of Elmore & Associates, PC for the County Audit Exit Conference.

Plat and Agreements -- The Board of County Commissioners signed the Plat for Pleasant View Homes, Phase I, a subdivision located in the W 1/2 of Section 7, T 13 N, R 19 W, PMM, Missoula County, a total of 3.34 acres, with the owners on record being Pleasant View Homes, Incorporated. The Commissioners also signed the following Agreements :

- 1) Subdivision and Improvements Agreement and Guarantee for the improvements which remain to be completed, guaranteed by a Letter of Credit from First Security Bank for the amount of \$366,000.00, with the improvements listed in the Agreement to be completed no later than February 2, 2002;
- 2) Development Agreement for Temporary Park Maintenance;
- 3) Development Agreement for Grass Cover of Unsold Lots; and
- 4) Condition of Approval, signed by Andrew Fisher, licensed engineer, certifying that existing drainage facilities and irrigation ditch control structures are adequate to divert water from a 100 year flood event from Grant Creek.
- 5) Effects of a 100 Year Flood of the Development Potential of Pleasant View Homes by Howard Newman, Hydrologist and Andrew Fisher, licensed engineer. (Approved by Commissioners).

Amending Condition of Approval – The Commissioners approved an Amendment to Burke Subdivision for Lease or Rent to remove Condition of Approval #4 and to clarify that Terrace View Drive is a gravel road where it intersects the driveway access, therefore paving the approach is no longer required to protect the public road.

TUESDAY, MARCH 21, 2000

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

Claims List -- Commissioners Carey and Evans signed the Claims Lists, both dated March 21, 2000, batch numbers 553, 554, 556, 557, 558 and 559, with a grand total of \$158,744.30; and batch number 555, with a grand total of \$4,262.34. The Claims Lists were returned to the Accounting Department.

Monthly Report -- Chair Carey examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen Orzech, for the month ending November 30, 1999.

Agreement – Chairman Carey signed an Agreement with the Department of Health and Human Services, County Health Department, to deliver PHN services to child care providers through collaboration with Child Care Resources serving Missoula, Ravalli and Mineral Counties in the amount of \$2,400.00. The document was returned to the Health Department for further handling.

Amendment – Chairman Carey signed Amendment No. 1 to Contract No. 99-07-5-31-261-0 with the Montana Department of Public Health and Human Services, amending the total amount payable as consideration for the services performed to be \$118,000.00 in Section 3: Compensation. The document was returned to the Health Department for further handling.

Task Order – Chairman Carey signed Task Order No. 00-07-4-31-301-0 with the Montana Department of Public Health and Human Services for the purpose of supporting the public health immunization clinic. The term shall be January 1, 2000 through December 31, 2000. The total amount will not exceed \$10,536.00. The document was returned to the Health Department for further handling.

Amendment – Chairman Carey signed Amendment No. 2 to Contract Agreement No. 3668-02 between the University of Montana Rural Institute on Disabilities and the Missoula City-County Public Health Department, amending the following:

- 1) For the purpose of the delivery of services, the term will be September 30, 1997 through August 31, 2000.
- 2) To provide supervision for a full-time public health nurse dedicated to the HOPE project who will recruit program participants by providing outreach and assessment in the homes of potential participants, all occurring between September 1, 1999 and January 31, 2000.
- 3) The amount will not exceed \$22,320.84.

The document was returned to the Health Department for further handling.

Tri-Party Agreement – The Commissioners signed a Tri-Party Agreement with the State of Montana and Montana Rail Link, Incorporated to upgrade the existing at-grade crossing signals and activation equipment as shown in the scope of work, located at crossing U.S. DOT 086 403E as indicated in Exhibit "A". The State will pay 80%, the Railroad will pay 20%, with an estimated total of \$50,000.00. The document was returned to Horace Brown, County Surveyor, for further handling.

Contract – The Commissioners signed a Contract with Insured Titles LLC, declaring them to be the lowest and best bidder for Ownership and Tax Deed Title Searches and awarding them the contract for the sum or sums named in proposal, as per the bid awarded on March 8, 2000.

WEDNESDAY, MARCH 22, 2000

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

ADMINISTRATIVE MEETING

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

Budget Agreement – The Commissioners signed a Budget Agreement with Montana State University for the cooperatively financed salaries of Missoula County Extension Agents, a total of \$61,491.60 for the period beginning July 1, 1999 and ending June 30, 2000. The document was returned to Jerry Marks at the Extension Office for further handling.

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with the Missoula YMCA to support the Pathways Shelter Program (through the Rural Domestic Violence Program Grant) in providing services to victims of domestic violence. The total amount shall not exceed \$34,104.00. The term will be January 1, 2000 through June 30, 2000, contingent upon Missoula County's receipt of Rural Domestic Violence Enforcement Grant Program funds from the Violence Against Women Grants Office.

Professional Service Contract – The Commissioners signed a Professional Services Contract with Missoula Electric Cooperative for installation of backbone power within Phase I, Missoula Development Park, changing the electric line from the east side of the proposed Kestrel Court, to the west side. The \$36,478.00 cost also includes the removal of the overhead electric line that crosses Lot 3, Block 2. The document was returned to Barb Martens in the Projects Office for further handling.

USDA CCC-505 Form – The Commissioners signed the USDA CCC-505 Form allowing adjustments to be made to update the Production Flexibility Payment for the Missoula County Development Park. The County must meet the following requirements to be eligible to earn a Production Flexibility Payment on the acres within this farm:

- 1) Land that is now owned by the County;
- 2) Was a part of the old farm that Pruyn leased from the County in 1996 when the Production Flexibility was established;
- 3) Has continuously been in the farm (with various farm numbers) since 1996; and
- 4) Currently can be considered agricultural land.

Upon adjustment by the Farm Service Agency, the County will receive a payment of approximately \$2,500.00 - \$3,000.00. The document was returned to Barb Martens in the Project's Office for further handling.

Professional Service Contract – The Commissioners signed a Professional Services Contract with Missoula Correctional Services, Incorporated for the purpose of obtaining the professional services of Chemical Dependency Treatment and Case Management. The term shall be December 13, 1999, through June 30, 2000. The total amount shall not exceed \$130,737.00.

Declaration of Support and Cooperation – The Commissioners signed a Declaration of Support and Cooperation in the implementation of the terms and conditions of the Memorandum of Understanding, dated January 10, 2000, between the Missoula County Airport Authority and the USDA Forest Service, Aerial Fire Depot, to provide a general framework between these two parties to achieve the common goal of cost effective and efficient site management, safety and security at the Missoula County International Airport complex.. The document was returned to the Airport Director for further signatures and handling.

Extension Request – The Commissioners approved a request for a 12-month extension of the final plat approval deadline for Tall Pines Summary Subdivision, in accordance with the recommendations of the Office of Planning and Grants staff. The new filing deadline will be March 24, 2001.

Other items included:

- 1) The Commissioners made the following Board Appointments:
 1. Will Deschamps reappointed to a three-year term as member of the Larchmont Golf Course Board of Directors. The term will run through March 31, 2003.
 2. Lorraine Martin reappointed to a three-year term as a member of the Larchmont Golf Course Board of Directors. The term will run through March 31, 2003.
 3. Samuel Warren reappointed to a three-year term as the first alternate member of the Larchmont Golf Course Board of Directors. The term will run through March 31, 2003.
 4. Ronald Cox to fill a vacancy on the Seeley Lake Community Council. The term will run until May of 2003.
 5. Otto Nikoleyczik to a one-year term as a member of the Missoula Rural Fire District Board of Trustees. The term will run through the first Tuesday in May, 2001.

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

PUBLIC MEETING – March 22, 2000

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

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$325,693.03. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Hearing: Intent to Create RSID No. 8469 (Paving of Snowdrift Lane)

Chairman Carey opened the public hearing.

Jesse Sattley, Rural Special Improvement Districts, presented the staff report.

This is the creation of RSID #8469 for the paving of Snowdrift Lane in Missoula County, Montana.

A petition to create the RSID was received with 73% of the property owners approval. The cost of the paving improvement is estimated at \$212,000, or \$5,578.95 per lot. There are 38 lots in the district and the term of the RSID is 15 years.

Tim Wolfe of Territorial Engineering will be the district engineer. One letter of protest was received.

Staff recommends creation of this Rural Special Improvement District for the paving of Snowdrift Lane.

Chairman Carey asked if the cost per year for each homeowner was known?

Jesse Sattley stated the exact figure is not known at this time as the bond sale is not complete. When the interest on the bonds is known, a definite figure can be calculated.

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

Commissioner Evans moved that the Board of County Commissioners approve the request to create RSID #8469 for paving of Snowdrift Lane as there has been inadequate protest and more than sufficient support by the residents. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Hearing: Call for Projects to be Considered in Federal Fiscal Year 2001 Missoula Transportation Improvement Program (TIP)

Horace Brown, County Surveyor, stated there were a total of two projects, one could be divided into two phases or taken as a whole. The first project is a walkway on Cote Lane along the entire length of the road that was built in approximately 1976. The second project is in Frenchtown along the Frontage Road. The entire project would be all the way to Touchette Lane or it could be split into two project, from the school to Touchette Lane and then from the school back to the Interchange. The entire distance on the Frenchtown project is approximately 2 miles. The Cote Lane project is approximately 3/4 mile.

The approximate cost on the Frenchtown project shorter option, from the school to Touchette Lane, is \$259,186, including the Federal and County matching money. The approximate cost of the full length from the Interchange to Touchette Lane is \$464,613.

The approximate cost of the Cote Lane project is \$160,750, including 13.42% match from the County.

Commissioner Evans asked how soon the projects could start.

Horace Brown stated the projects could not be started until next year, because they would not be enough money to do these projects until next year. He did note that the Commissioners have to put a priority on the projects to determine which would be done first. There is not enough money next year to do either project in full, it will take at least 2 to 3 years to get enough Federal money to cover their share. The Surveyors Office has to know the priority so they can begin the design process this winter. The County is not charging for the design work, that is provided for free.

Commissioner Evans asked how the priority is established?

Horace Brown stated that they should listen to the public testimony first, then make their decision.

Stan Snook: My name is Stan Snook. In light of the recent tragedy that we had out in our community this fall in which we lost an 11-year-old youth, it has awakened our community, if you will, to a real need that is out there. We realize that a lot of times that these things are used, these bike paths are used for recreation, which this would be too, but the highest priority to us is that we're interested in saving our kids lives. The road out there right now has about a, in most spots, about six inches of pavement to the outside of the white line. There's no where for the kids to walk even in safety on this road. With the increase of traffic that is going to be proposed, and we have someone here from the Fish, Wildlife and Parks that will explain what they're going to do with the park out there to make it more of a draw to our community. That coupled with the fact that the mere growth of our Frenchtown Valley, we feel that this is just an absolute necessity, that this take place. As a father of an 11-year-old who just turned 12, and these two young men were only a week apart in their birthdays. When he passed away, that was a real hard thing as a father to have to tell my son that he lost one of his playmates. It ripped my heart out, to be quite frank. I vowed then and there that I wasn't going to allow that to happen again in our community. I can't even imagine the pain that the Jamis had to go through, losing Andrew. As a community, as I said, this opened our eyes. This is a need that is not new, it has been needed for some time and we hope that it will take a priority. Like I said, we're not only doing this for recreation, which it will be used for, but it's an absolute need. Our kids can't even, if they were to miss the bus and have to walk to school, they can't do it in safety. They can't go to after school activities in safety, and when you get 100 degree summer days, you're not going to keep kids from going to the pond to go swimming and there's no way that they can do it safely. And my fear is if we don't do this and act soon, that there's going to be more tragedies that occur that are needless and preventable.

Scott Waldron: Good afternoon. Scott Waldron, Frenchtown Fire District. Just a quick comment. As Mr. Snook stated, that area is very high traffic. I did some quick, looked up some statistics on the number of accidents we've had there in the last few years and when I got to 15 and quit looking and that's in less than 5 years and that's vehicle accidents, cars off the road, cars off the Interstate along that same stretch of road. During the summer the traffic in and out of the pond, there are times there's a hundred cars there. There's a number of activities that occur at the pond during the summer,

bike-a-thons and different things, that we, as a center there, get a lot of outside traffic that isn't Frenchtown, that also should put that on a little higher priority list. During school activities, such as we had last Saturday, the traffic along that road is very high volume. If you're looking for a reason to do, maybe, prioritize here, the speed on Frenchtown Frontage Road is, I think, 10 to 15 miles per hour faster than on Cote Lane and there's really a lot less place to get off. Cote Lane is fairly, you know, it's got a lot of lawns and stuff and homes already on it, where the Frontage Road doesn't, so, I'd sure like to recommend to the Commissioners that you approve that project. Thank you.

Lee Bastian: My name's Lee Bastian and I'm with the Montana Department of Fish, Wildlife and Parks. I want to start off first of all for thanking John Couch for calling me a couple weeks ago and telling me more about their trail project and one of the reasons he was also calling me was to, he had read through some of our six year planning efforts that we've been doing, that we had some plans for Frenchtown Pond State Park as well. It seemed to make sense that I share with the County and the citizenry here of what our master site plan is for Frenchtown Pond and to maybe show how these two projects could possibly compliment each other. I don't know for sure how to show this, I think I can talk loud enough so that everybody can hear. This is our master site plan for Frenchtown Pond.

Commissioner Evans asked Mr. Bastian to come to the front so the Commissioners could see the plan as well.

Lee Bastian: It may be hard to tell for sure what's going on here because you are at such a disadvantage as far as the distance goes, but one of the reasons that we were prompted to look at doing something new and different out at Frenchtown Pond was the fact that we had an old interior road system that was starting to deteriorate pretty bad and we needed to go in there and start doing some improvements on that road system. We also realized that because of the bareness of the park it'd make sense to try to get some trees established out there that would start growing up and providing some shade for everybody. We obviously didn't want to start planting trees in areas where we might want a road system to go, so we went into a planning process and we've been working on a planning effort out there for the last several years, trying to get some feedback from the community, although I'm finding out now talking to some of these folks, that there's a lot of people that didn't make those meetings. But anyway, what we're proposing to do is to move the entrance station a little bit farther down the road so that we can utilize this, the area a little bit better. Come in here and do away with the big loop that's going on and come in with just a good road system with a cul-de-sac there, come over here with another cul-de-sac with parking. Right here is where your existing shelter is. We're proposing to add to that a volleyball court, put in another group shelter down there. We're getting a lot of increased use in the amount of group activity going on so we felt that having two group shelters out there would help the community be able to have more expanded areas to do that sort of activity. Obviously, the big draw to everybody is the pond and the swimming activity. On a hot, sunny day we've all seen the amount of activity that goes on out there on that beach. We would like to improve that beach area, but also come over here and add another beach area with another dock so that we could maybe start splitting up that use so that they aren't concentrated all in one area. That would also help as far as families that are using our group shelters. They are kind of in a state of confusion when they come out here and have a group picnic, all the little kids want to go over to the beach area and do their thing, so they can't stay with their group. And so we felt that if we could create some swim area opportunities right there down below that shelter that that would help that opportunity as well. But obviously the thing that would really draw here is that one of the things that the community really stressed is the need for a perimeter trail going all the way around the pond, which is one thing that would be a part of the project as well. We also would like to come in here and put in some lawn irrigation and enhance the grass vegetation that's out there. Right now we just have a bunch of clump grass that's growing. A lot of people have said it's hard to do any sort of ball programs or that type of activity, so we've created some nice open green spaces. Even though it shows a ball diamond up here, we aren't putting a ball diamond in, but it's big enough to show that a ball diamond, or somebody that wanted to play some baseball, could do that. And then a whole lot more trees. A lot of trees and bushes along here that would help with some natural screening. It would protect both the residential area that going on over here and also what's going on in the park. And then also some additional vegetative screening along the Interstate so that it starts feeling more like a, kind of a park out there, instead of just here's the Interstate and here's the pond and that's it. So when John called me and said, "We've got this plan to do a trail out here," and I said, "Well gee we got this plan to do a park improvement project out there," it seemed to make sense that the two kind of compliment each other. This would be a great opportunity to share with everybody what our plans are. We've got funding to get started on this project this fall. I don't think we have enough funding to do the whole project, but we'll probably do it in a phased approach. And so you'll see some things occurring out there this fall as far as the project goes. I know that as far as, if there's funding needed for this trail project, I don't know enough of the details right now to know where everybody is with funding, there are some grant programs within our agency that are out there that would be an opportunity for the community to apply for grants and match some of the existing dollars that are there and I've got enough information that I can share with whoever is working on that to get them in line for applying for that grant money. Just to let you know, visitation-wise, we're having around 20,000 visitors per summer out there, so in line with what some of the folks have already said as far as this being a drawing card, it is pulling in a lot of people. I think if we complete, once we complete this project, it's going to be drawing in even more people so I think anything we can do to enhance the recreation and the safety issues would be real important.

An audience member asked if this was the highest use state park in the County?

Lee Bastian: No, I would say it would be pretty comparable to Salmon and Placid up by Seeley Lake as far as State Parks go. And actually, Beavertail Hill east of town, it's surprising, that actually gets a lot of use, up and over the 15,000 category.

An audience member asked if the 20,000 visitors were during the time the park was open, about 5 months per year?

Lee Bastian: We open it May 1st, close it September 30th, as far as allowing vehicles inside the park. Obviously, if people want to park outside the entrance station, they're more than welcome to walk on in. But, yeah, over that summer months, that's it. So anyway, we're here to help however we can to work with each other and see what we can do together.

John Couch: Thanks Lee. My name is John Couch and I think what was said about the pond and what was going to be happening to the pond and the safety issue is really the main concern. When I read that six year plan and found out what was going to happen at the pond, I knew that, like Lee said, this ties it right in with what we want to do with the trail.

When this summer comes and the kids start riding their bikes up and down, walking, trying to walk to the pond, or even to school, that road, as been said, to be very dangerous. This whole project is exciting enough to where you can see the turnout that we had today and we just had a little short notice, I mean like, everybody Monday, we got to go Wednesday, and look at all the people that showed up, it's great. A lot of interest here and we really appreciate you considering this. I think that, if it's alright, maybe we could hear from the principal of the high school and tell you a little bit about what's happening as far as the amount of students that we're getting in the high school and in Frenchtown itself. Steve, would you do that? Great. Thank you very much.

Steve Chiovaro: Hello, I'm Steve Chiovaro, I'm the high school principal at Frenchtown. Appreciate this opportunity to sit, and or stand here I guess, and talk to you for just a minute. I think you guys, as the County Commissioners, we appreciate everything that you do do, and I think that you're well aware of the growth that we're having out there in the Frenchtown community, cuz you guys authorize the subdivisions all the time. In fact, we'd like to talk to you about that ...! In 1990, our population in the high school was 240 students. This last fall we opened up with 367. Next year, if we have no new students move into the school, we'll have 373 move in on the first day. However, we've been averaging 5% growth a year. With our 5% growth, we'll have 393 students in Frenchtown the first day. For us, that is a real, that's one of the concerns that we have about the necessity to have better flow of traffic through there. We're having more kids all the time because we're getting more homes right by the high school, we're having more kids all the time wanting to ride their bikes to school at this time. I saw two kids today that we're riding their bikes to school and quite frankly, I'm not trying to exaggerate at all, it scared me half to death because that morning the traffic is just flying by there, visibility isn't great. I stopped for a while and made sure they made it and they made it fine, but it's very frightening. At the same time, again, you guys are just exceeding aware that in West Reserve, excuse me, in the North Reserve and Industrial Park that are filling up all the time out there. The people who are going to move into our community, a lot of them are going to move into the Frenchtown area because that's the easiest access to those people to come on in. We've already had a number of people call from the Home Depot saying, "Hey we want to move into Frenchtown because it's easier for us to get on the Interstate and just pop on in there." Also, at the same time, if you drive by, you'll see that this is a community that's unbelievably exceptional in volunteering time and energy. I've never been around a community like this in my entire life. There's three softball fields in front of the school, they're all donated, completely, there's no district money involved there. There's a stadium and a 10 lane all weather track that's all donated, not a dime of taxpayer money involved. In those, though, in the summer, those are completely used. We have Mullan Trial Softball, so we have three softball fields sitting right by the busy road. We also at the same time have the track right by the busy road. We have a baseball field that's going to go in right by the busy road. We have one day, the Stone Invitational Track Meet and the Frenchtown Invitational Softball, where we have 1,000 students that are right there by that road. To me it's very frightening. We also have a community now of school population of almost 1,200 students, we're almost a Class A school, we will be a Class A school very shortly. If you take a look at other Class A schools in the area, you have Stevensville, you have Hamilton, you have Ronan, we need the infrastructure out there to be able to be comparable to those community so we can get kids to and from the school, which is the center of the community, safely. I really ask you to consider all these facts when you're looking at priority because, folks, we need it. It's just that simple, we need to be able to get kids from one spot to the other and do it safely. There's a lot of kids that pop in and out of there. Thank you.

Veronica Jami: Good afternoon ladies and gentlemen. My name is Veronica Jami. And listening to what everyone else has said, they've pretty much said what I was going to say, but I'll add just a few little things. All the children, as you look at the map up there, the children, and I believe it's north, in my country where I grew up it was right and left, so I think it's north, which is the top part of that, right, the north side of the Frontage Road, the children, all the children, to get to the pond as everyone has said, have to cross over the road. Our Frontage Road in Frenchtown is our main road and as Mr. Chiovaro has mentioned the speed limit, others have mentioned it, is basically a 55 miles an hour on that road. So, it's very difficult for children to have the safety to cross that road. It's very, very difficult. Shaddam and I are the parents of Andrew and on November 26, 1999 in the early hours of the evening, Andrew was hit by a pickup and killed while riding his bicycle on the Frontage Road. I've heard many comments as to why were these children out there. There were three children out there, Andrew and his three friends. He'd had a wonderful day, he'd had a good day. And I've heard many comments from people asking well why were these children even on that road, well, where else were they going to go. There is nowhere else for these children to go, to get home on their bicycles, other than the Frontage Road, on the road. Whether or not they drive on the gravel, that's impossible to do, they have to be on the road. Our belief, and we really believe this, if there was a walk path, a bike path, whatever is adjacent to our Frontage Road, we believe these children, our Andrew and his friends would have been on that and he would be here. There wouldn't have been this accident and we wouldn't have lost him. Shaddam and I, daily, hourly, momentarily, we think of Andrew, we're reminded of Andrew in every way, shape or form, because he was our child, and that's going to go on for the rest of our lives. No one, and I say this in all honesty, no one could ever, ever know what it is like to lose a child until you do, and I pray none of you here ever, ever know that. The monies, if you can possibly find it in your hearts, to distribute these monies that are available to build our road, I believe, we all believe, that we will be saving another child's life and preventing another family from living their lives the way Shaddam and I do. I'd like to take just a second to read something to you written by Ralph Waldo Emerson, and I talk pretty fast so it won't take a minute. This is called "Success." *"The meaning of success is to laugh often and much, to win the respect of intelligent people and the affection of children. To earn the appreciation of honest critics and endure the betrayal of false friends. To appreciate beauty. To find the best in others. To leave the world a bit better, whether by a healthy child, a garden patch or a redeemed social condition."* This is our redeemed social condition. To know even one life has breathed easier because you lived. This is to have succeeded. Thank you very much for your time.

Dennis Norman: My name is Dennis Norman. I'm a teacher at Frenchtown High School and I'm also the track and cross country coach there. As a parent also in Frenchtown, I think there's not many parents who couldn't tell you a story of close misses on this road. And not to repeat things that have already been said, I've been there 15 years and have run for several years and it used to be uncommon to see a runner or a walker on this piece of road and now it's a daily event, it's common. We're starting now, I know the last few years, seen a lot more young kids riding their bikes to Frenchtown Grade School and High School. And when you drive through Frenchtown you see the Frontage Road, it doesn't look like a road that's used a lot and it really is. I think the comment from the Fish and Game, that we have over 20,000 people there, that's in a very short time, that's only about 4 or 5 months. As a coach, we would like to put our kids out and run in the community and it's really hard for us to do. We leave the school property and we step onto the Frontage Road. We're at a point now where we have the kids runs down into the barrel pit, I guess you'd call it, to Roman Creek

and then go north up Roman Creek, but it's really been a concern for not just the school but the community, because of the speed of the traffic and mainly that the increase of kids that we're seeing out on this road. I would ask, like we've heard from several people, that you guys consider this project. I would like to offer to you as an individual that if you would like to visit with me or any of the people from the school that we would take you out and show you exactly what we're talking about as far as the road and what the use is. I think sometimes not living there and not seeing that, it's hard to understand. But I would like to, you know, appreciate the consideration for this project. Thank you.

Scott Waldron: I think there's two waivers of RSID in that stretch, one that goes around the new homes along the pond, just north of the pond there, Navajo Lane and all those little, that subdivision there. I believe when it was subdivided there was an RSID for a waiver of sidewalks and also down here right next to the exit, there is also a waiver of an RSID along there. So, I believe that a fair amount of that's already got a waiver in it for an RSID.

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

Commissioner Evans stated that both she and Chairman Carey extended their sincere condolences to the Jami family. She also noted that everyone owed a debt of gratitude to Horace Brown for recognizing what needs to be done and putting the money where it could take care of this problem. It is unfortunate there is not enough money to do the project all at one time. She did not know what the history was for the Cote Lane project. Usually, both side of the picture are looked at but no one came forward to speak to the Cote Lane project and the problems with Frenchtown have been made very clear.

Commissioner Evans moved that the Board of County Commissioners approve the Frenchtown Frontage Road Walkway Project and the Cote Lane Walkway Project to be funded by CTEP and County Road Department match funds, with County engineering doing the design for the projects, and that the Frenchtown Frontage Road Walkway Project be given the number one priority. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Chairman Carey stated that the order of the agenda would be changed to have the hearing for the parks mill levy question next.

Hearing: Submission to Electors the Question of Authorizing a One Mill Levy for Parks in Addition to Current Mill Levies

Chairman Carey opened the public hearing.

Sue Brown: I'm Susan Brown and I'm the chairman of the County Park Board this year. At our last Park Board meeting, we voted to ask you, the County Commissioners, to put a one mill park levy on the June ballot. We did this for two reasons. The first reason is our concern about the upkeep at Fort Missoula Park and the second reason is our inability to help financially in the rural County parks. At Fort Missoula Park, the responsibility for general yearly ground maintenance comes with ownership and the County has fulfilled that responsibility since the Fort was created with Federal government monies. If the County Commissioners cannot guarantee that there will be money in the County's general fund, then this levy needs to be put on the ballot and as elected officials, I hope that all of you will support the levy request. This is a quality park given to the County with the understanding that the County will maintain it for now and the future. The Park Board is also concerned over the current condition of the infrastructure at the Fort. It has been deteriorating and this was brought to our attention in a letter dated February 1996, from the Montana Department of Fish, Wildlife and Parks. The bathrooms do not operate sufficiently for large groups and they are not ADA accessible. The tennis courts are not safe for high school teams and the County should fully participate in the alliance of dollars that is coming together from the high schools, the city, the community tennis players, so that all 8 courts of ours can be redone this fall, and not just four of the courts. If we only did four of the courts as in the plan, that would leave the remaining four courts for us as a County to do on our own in a few years. The parking lot on the south side of the park is insufficient for most group activities, especially the YMCA soccer league. Improvements would provide more parking to that area and it would no longer be an eyesore as it is in the vicinity of the well-kept grounds of Larchmont Golf Course, the BLM and the Community Hospital. In addition to these expenditures at the Fort, the County would again have money to help neighborhood parks in the County. We used to receive around \$25,000 a year from developers as payment for lands that were not deeded as park lands. Since October 1995, when the legislature changed the subdivision laws and when it went into effect in October, we receive next to nothing. That large source of revenue is no longer available to the County parks and this proposed levy would enable the Park Board to monetarily help the neighborhoods to build their parks, as we did in Frenchtown, we have helped several times in Frenchtown with their school parks, both the high school and the grade school. These local projects are expensive and they're time consuming and they require a lot of volunteer labor and we would like to have the funds to help them match their dollars and effort. We hope you agree with us and that you will ensure funding for these necessary projects.

Horace Brown: I'm Horace Brown, member of the Park Board. I support this one mill levy. It's really needed by the Park Board, we don't have enough money to do the things that are necessary, especially at the Fort. There's toilets that need to be fixed and a lot of work that needs to be done out there just to meet ADA that we don't have money to do and I think it's important that we're able to do this, because the money is finally available. If we don't get this money, then it will mean a few more years that the park will be in disarray out there. Somehow, the County needs to find money to take care of the problems at the Fort. Thank you.

Larry Schock: Hi, my name is Larry Schock. I'm the president of the Missoula Softball Association. You all probably remember my face from the last three or four years at the budget meetings. I'm just here to say that the Missoula Softball Association wholly supports the need for the mill levy and as with the last mill levy, we're pledging our resources to help see if we can get this pushed through and we'd appreciate it if you would put it on the ballot this year. Thank you.

Dart Smith: I'm Dart Smith, I'm on the County Park Board. I'm also very active in the soccer community in Missoula and we do support the levy. Our soccer fields this year, not only at Fort Missoula but in other areas of the community, are unusable. We, for the past two years, have hosted the state soccer tournament which brings in thousands of people every year. This year, the numbers are up, we have 98 teams alone at 20 people per team plus all their parents coming into the community, are actually not coming into the community because we are unable to host this tournament, which you're looking at lots of dollars in the community, probably about \$2 million in the community that we're losing because

we're unable to host the tournament because of lack of quality soccer fields. Now that money is going to Butte and not staying in Missoula, as they're the ones that are hosting this year. So we hope that with the passage of this, we'll be able to get those fields out there back up in condition, be able to get some of the other areas done and up and running so that we can host those and have quality fields for our regular season play as well.

Lee Bastian: My position down at Fish, Wildlife and Parks is Regional Park Manager and so I understand a lot of the problems that the City and the County deal with as far as trying to maintain and take care of their park program here. They've got some tremendous resources out there. I've gotten to know Fort Missoula real well myself and the letter that was read earlier, I think I may have had some input into the comments that were made in that letter. Our agency administers the land and water conservation fund program which is a funding source that is used by a lot of local communities for a lot of park facilities. Part of our job is to oversee whenever a project has used that money to see how things are going and so that's why we had the opportunity to inspect and respond to those areas out there. I know funding is hard to come by and I would sure like to see the opportunity for the citizens of Missoula to reconsider this and if they support it, then we'd have some additional funding out there to address the park program. Thanks.

Commissioner Evans asked if Fish, Wildlife and Parks had any money available for County parks?

Lee Bastian: The Land and Water Conservation Fund program that I referenced, for about the last 5 or 6 years that funding has not been authorized on the state side. Just this last year in Congress, they did appropriate \$380,000 to Montana. There's an opportunity for possibly 50% of that money to be available to local communities for an additional funding source through a grant program and whoever is interested, I would have more details for that money that's available. That's just a one time shot in the arm. If Congress reauthorized that program to the full level that they're considering right now, there could be an opportunity for this continued funding source and local city and county governments would have an opportunity to apply for these monies. So there is a real opportunity there.

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

Commissioner Evans moved that the Board of County Commissioners place on the ballot the request for up to one mill for funding park maintenance and programs.

Chairman Carey seconded the motion. It was a difficult decision for him, he values parks highly but was concerned that with possibly three mill levy issues on the ballot, it would be tough to get them all passed. He hoped the parks people would work as hard as the museum people and weed people. To get this passed will take a good effort. He called the question. The motion carried on a vote of 2-0.

The Commissioners signed Resolution 2000-022 "To Submit to the Electorate the Question of a Permanent Increase in Property Taxes of up to One Mill for Funding Park Maintenance and Programs," which allows the mill levy question of support for park funding to be put on the June 6, 2000 ballot.

Hearing: Submission to Electors the Question of Authorizing a Two Mill Levy for Control of Noxious Weeds in Addition to Current Mill Levies

Chairman Carey opened the public hearing.

Commissioner Evans pointed out the issue being discussed was whether or not to put this on the ballot. It is not about pesticides being a problem or a particular way to take care of weeds, it is about giving the electors the opportunity to vote on whether they want to spend money to control weeds. She would appreciate keeping the testimony to the question at hand.

Dusty Deschamps: Members of the County Commission, I'm Dusty Deschamps, I'm the president of Citizens for a Weed Free Future. Over a year ago, our group met with the County Weed District. We've met with the Board of County Commissioners. I think this is the fifth time we've been before this body. We've met with the City Council, we've met with every major landowner in Missoula County. We've met with a number of environmental groups and other interested organizations in drafting together a proposal to put this matter before the voters in June. There will be speakers behind me that I think will flesh out a little bit what we're here to talk about today, but you have in front of you a proposal that I think is a model of what could be done with two mills if it was awarded by the people of Missoula County. I think that it's time that Missoula County did, in fact, get active in the weed control business. I think this is the way to do it. I would encourage this Board to put this matter on the ballot for the voters to decide in June. Thank you very much.

Bryony Schwan: My name is Bryony Schwan. I am a member of the Missoula County Weed Board and I'd like to start off to saying that I do support this mill levy. I think it's critical that we increase funding for the Missoula Weed District. I've been on the board for a number of years and it's been extremely frustrating to do the kinds of projects that need to be done, particularly public education around weeds, with the very little amount of money that we have right now. I do have some questions for the County Commissioners. I have one concern is that my understanding was that you had already voted on this issue so I'm not sure why we're having a public hearing after that.

Commissioner Evans: It's required by law.

Bryony Schwan: But what I don't understand is why is the public hearing happening after ...

Chairman Carey: We voted to do this.

Bryony Schwan: Oh, okay, alright, I wasn't clear on that. I believe that weeds will be controlled whether we like it or not and the question is whether they'll be controlled entirely by private landowners or whether they'll be controlled by a combination of the efforts of private landowners and local and state government. I think that the role of local government is critical because it, local government is going to be the entity that really takes control of public education and I think that's something that's really critical right now so that we can do something to reduce the spread of noxious weeds. I do have some concerns though and perhaps the County Commissioners can address those concerns in that when

we have a mill levy, we're just going to have a single line on the actual ballot that says that you're either in favor or against this mill levy. But my concern is how this mill levy gets spent in the future, I think that the Weed Board has taken a lot of time over the last couple years, over the last year, sorry, to look at this particular levy and the proposal that comes to us from the Citizens for a Weed Free Future and to their credit they have made a lot of changes from recommendation by the Weed Board. But what happens down the road when voters have voted for a mill levy and there is no document behind it to talk about what the intent of that mill levy was. In other words, what happens when we have a new Weed Board or new County Commissions or new weed staff, is there any kind of documentation that we can put on there to make very clear what the intent of this money is going to be used for. So that's my major concern. And finally, I would like to say that I want to ensure that if there is some written intent, that it be clear that this money be used for an Integrated Vegetation Management Plan, and one that incorporates a least toxic alternative language. Thank you.

Commissioner Evans: I'm going to try an answer to that, but I make no guarantees it's accurate. I believe from a legal standpoint that the Commissioners cannot commit future Boards to anything. However, the County did pass and adopt an Integrated Vegetation Weed Management Program which is on record that we've done that. But recognizing that things can change, and I'd appreciate it if counsel will make sure that I don't say something that's not legally correct, things can change over time. The type of weeds, the type of products to deal with them and I think those things are always subject to public mandate and the attitudes of the Commissioners that you elect. That's kind of a non-answer, but it's the best one I can give.

Bryony Schwan: Okay, because I think that if we have an Integrated Vegetation Management Plan, then that provides a flexibility for the land managers to use what tools they think are best for a site specific issue or problem. The concern that I have is that sometime down the road we do have some kind of decision-making body that completely moves away from that intent.

Commissioner Evans: It is possible, Bryony, but, since we don't have a crystal ball and we can't guarantee what someone does in the future, we legally cannot tie the next Board of Commissioners to anything. I believe that's the accurate answer. So, I guess as somebody said once, vigilance would be required.

Chairman Carey: Bryony, have you had a chance to see the materials that the Citizens for a Weed Free Future have distributed?

Bryony Schwan: Yes.

Chairman Carey: I'm wondering if we could perhaps cite these as one of the reasons, if we do okay this up to two mill levy, put this in the record somehow? I wonder if that would help?

Bryony Schwan: I would like to see something go in the record. I think that there's still some revisions that need to be made and I'm willing to work with Citizens for a Weed Free Future as a board member, and I think the Weed District, the Weed Board is willing to make some changes to that, but I think that there are, they're close, but there's still some changes that need to be made. I would also like to submit some comments from Gail Gutsche, who is at a legislative meeting and couldn't be here.

Gail Gutsche's written comments: *I have several concerns with the proposal as written. My comments here pertain to the two-page overview. My major concern is that integrated pest management (IPM) or integrated vegetation management (IVM) needs to be defined in the document as utilizing the least toxic alternative on every site, every time, with herbicides as the last resort. That is the original definition of IPM and the county needs to stick with it.*

Throughout the overview, words like "control" and "eradicate" and "address" noxious weeds appear, without describing how. Since the default nearly always falls to pesticides, it is incumbent upon the county to define the boundaries of IPM.

I see this document serving the purpose of defining the intent of the mill levy. Obviously, the voter will not be privy to it, but future county commissioners and future weed boards will. The intent behind the mill levy is important and will serve to guide future elected officials, should the levy pass.

The overview also contains numerous rebuttable statements like knapweed is an easy to control weed. If it's so easy to control, why do we have thousands of acres of it all over Missoula County? Other statements like noxious weeds are poisonous or unpalatable to most animals are either simply not true or not known. Many people are allergic to weeds is perhaps true, but many people are also allergic – or worse – to pesticides and that is not mentioned anywhere. In short, the document needs a serious re-write with an eye towards representing both sides of the picture.

Also, nothing is mentioned about basing weed management practices on the desired use of the land and the underlying ecology. Spraying noxious weeds with pesticides without a plan about what to do next invites the invasion of new, tougher to manage weeds.

I urge the commissioners to refrain from approving the mill levy proposal until and unless input from a more balanced perspective is sought.

Chairman Carey: In looking at the literature from Citizens from a Weed Free Future, I mean, I think it provides a pretty solid argument for putting this on to the people, and I was just thinking in terms of, for the record, being able to go back. We will review budgets every year if this should pass, but this would be something, a good reference for future Commissioners and Weed Board folks to take a look at as some of the reasons we thought this was a good idea at the time.

Tony Tweedale: My name's Tony Tweedale, I'm here representing myself. I'm not fundamentally opposed to the ballot levy but I do want to oppose it for the reasons that will become clear. I think that the question that just came up has a better answer. All the work that's gone into the proposal so far from the Citizens for a Weed Free Future and the Weed Board hasn't been, hasn't involved, really, a whole cross section of the Missoula society and it certainly wouldn't be proper to automatically adopt their paperwork and their efforts as what you might call the official reference document for

this ballot initiative. I do have a question first before I expand on that a little bit. The previous increase mill levy hearing that you just had, there was a staff report, the Parks Board recommended to you that you adopt this levy. Can you, a few minutes ago, Mr. Carey, you just mentioned that you had had a previous vote. When was that?

Chairman Carey: Oh, gosh, I think it was about three weeks, four weeks ago, perhaps. We voted to have this hearing.

Tony Tweedale: Right. Getting back to the direct issue at hand, as I mentioned a minute ago, there a more, I think a better solution if there turns out to be some legal need or just some fundamental need to have something the voters can refer to and I believe there is State law for at least election of candidates and for general questions that go before the electorate, that mandates that official materials, pro and con, have to be prepared. Anyway, the solution that comes to my mind is that the Commissioners consider a resolution, your resolutions have the force of law like City ordinances, and it would be a public process, everybody could contribute to it and it would be a lot more permanent than what Mrs. Evans suggested as just would be the luck of the draw in the future as to any changes in this basic tripling of the money that's available for noxious weed management in Montana. Bear that in mind, tripling of the money. What I'm saying is to have a fair process here, these questions that have already come up, you're going to have to consider them seriously. So anyway, I'll continue in a second. A resolution, which to be above board you ought to pass before the election, as many parties have already suggested, could and is not in the Citizens for a Weed Free Future proposal yet, could include words, statement to the effect that herbicide use will be considered only after Integrated Pest Management has been considered and, of course, there'd be a definition of sorts for IPM. I think a lot of parties strongly believe that that's the heart of IPM. You have to, well, I won't get into it, it's obvious. But it's an obviously very important element. Other elements that strike me that could be included in the resolution, and I've mentioned these to some folks, the increased monies are going to be allocated according to the Citizens for a Weed Free Future proposal and the Weed Board's input to various parties and agencies through grants and other, and through direct government programs. I'll just run these off real quickly. You could first of all split the award of any monies into two separate periods and then require people who are either applying for the money or who are going to receive the money, to submit an Integrated Vegetative Management Plan, or an IPM plan, for example to the County Extension Office. Successful awardees of the money would have to take an IPM course, again offered probably by Extension services and funded out of the proposed levy and before receiving the first installment, and then there'd be an evaluation process, again by Extension office, fully funded through the levy, to evaluate the implementation of the IPM program before the second and final, or if there's more than two installments, is awarded. And then, finally, I'd suggest that there be a process established in the resolution to initiate a bias in favor of the best IPM plans in terms of how much money awarded and a penalty in terms of awarding lesser or no money, depending on how bad the proposed IPM plan that's submitted is. These aren't final suggestions but I think they indicate the direction it's going. I'm going to test Mrs. Evans' patience a little bit and just spend a minute or two talking about weed management, and I'm not going to get into any details. The driving principal of weed management is that they're genetically programmed to out compete. Of course, native vegetation is programmed to do very well, but that's why they're called weeds, because they compete extremely well. So, what's the take home lesson for that in terms of spending this mill levy. The only successful management tactic is to prevent either the seeds from coming in or the seeds from germinating. All other management tactics are automatically two strikes behind. So given that, what's the role of herbicides. Jerry Marks keeps saying that we need an independent forum in which to discuss the health effects of pesticides. I would love that forum because, I won't get into it, but all the evidence favors caution. But, you can't see it very well, but this graph from a review of weed resistance and generally pest resistance, these two graphs, you can just see the lines here. These are the number of species that have been documented to show resistance to pesticides and I believe it's this line here that shows the increase number of species that are, of weed species, that are becoming resistance to herbicides. And this other graph, which is a companion graph, is the annual harvest lost to pests, even as, of course, pesticide use has increased, and each segment in these bar graphs is crops or weeds or bugs and you can't see it, but losses to weeds have increased dramatically. So, you know, that's basically the basic argument behind being cautious in how you spend the mill levy. So, in summary, I'm in opposition to the levy as currently proposed to be spent in this amorphous, semi-legal way, I think. I know there's a lot of concern amongst tax payers at the number of levies on the ballot to be voted on. I know the legislature screwed counties over once again, gave rich property tax owners a big break and as you know, most property tax owners are going to see a very small decrease in their property taxes but the burden has been shifted to the counties away from the State and I don't fully understand the details, but I've heard that the net effect is that medium and average property tax owners are going to be noticing a much increased tax bill and one way this is manifesting is all the mill levies on the ballot in June. So if you combined public concern with being taxed with the Missoula Parks and Rec. random survey that was done a few years ago and is a valid, the key point about it is that it was a valid random survey, it wasn't a huge one so it had an error margin that was 4 or 5% instead of the usual 3 or 4%, but it was basically an honest, salable random telephoning of Missoula residents and one of the questions was, "Do you favor herbicide use in Missoula City Parks?" And it was literally a 50/50 split, it was like 49 point something to 50 point something and it varied by ward a lot but overall it was 50/50, so I'd suggest, and this is in closing, suggest to you that, as written, the plan that backs up the proposed increase levy for noxious weed use that going to be on the ballot is in danger of not passing. And that is to say that if it's improved a little bit, you could get the support of all elements of the community without much problem at all.

Chairman Carey: Thank you.

Tony Tweedale: I was curious about the

Commissioner Evans: Resolutions, Colleen?

Colleen Dowdall: The County doesn't have the same kind of resolution-making authority that the City has. Resolutions may be adopted for zoning, for regulating subdivisions and for animal control. And that is the extent of the binding resolution-making authority. The statutes do specifically state that the noxious weed fund must be expended by the Commissioners at the time and in the manner as is recommended by the Board to secure the control of noxious weeds, so it would be the case that this Board of County Commissioners could not dictate to future Boards of County Commissioners how the funds would be spent.

Tony Tweedale: I understand, I will look into that a bit myself. If that's completely the case, I would, nevertheless, recommend that the Commissioners pass a non-binding resolution, and I realize, and even before I heard that, I realized that the Weed Board was basically in charge of spending the increased tax levy, but I can't believe that under the total sum of the Montana statutes the Commissioners don't have budget authority over this particular mill levy, not complete



authority, but some authority, so either a non-binding resolution or find some way in which you do have authority over which way the money is spent. I, does the Weed Board report to the Commissioners in any other way?

Chairman Carey: Let's have the hearing and then we'll close the hearing and then we can have some questions and answers and so on. Would anybody else like to speak to this matter?

Andy Kula: Hi, I'm Andy Kula. In the interest of brevity, there's been some information provided to you about what this is about, but just to kind of paraphrase what the proposed mill levy is all about, I think I could probably summarize it in three points. It's for the citizens to come together and agree that we have a serious ecology problem, a serious weed problem in the community, in the County. The second thing is to obtain the necessary financial resources and funding to deal with the issue. And the third thing that's real important is to bring the community together in a positive light to collaboratively develop solutions to each specific situation based on the needs of each neighborhood, of each weed infestation location, etc. And thinking about that and the, you know, the magnitude of the problem, I would sure appreciate your consideration and recommend putting this on the ballot.

Chairman Carey: Thank you Andy. Anyone else like to speak to this?

Stan Lucier: Hi, my name is Stan Lucier and I left here several years ago. In 1963 I was a farmer out in the Frenchtown valley and I came back here a couple of years ago and back to the farm and I'll tell you, the weed problem is just totally atrocious in this County. I mean, we used to have nice fields, nice pasture lands and stuff like that. People have come in and said you can't do this, you can't do that, and the weed problem is really terrible. Anything we can do to cut this down is going to have to be done, we're getting overrun with the things. You can't have a field in anything anymore until the weeds are coming out, everybody says, oh, go cut your weeds or whatever, well it doesn't work. I'm looking at just myself, personally, putting up over \$5,000 worth of fence this year so I can get some goats in to try to get rid of some of that. The County does not spray their weeds anymore. I'm surrounded by roads, I've got people that have moved out of town, they want their piece of the green earth. Hell, all they can grow on it is weeds, they don't know how to take care of the land, they shouldn't even be out there. I mean, it's terrible. And we sit here and do nothing and something has to be done. I mean, out in that valley, out there in that Frenchtown valley, the weeds have taken over everything and we can't let this sit, something has to be done. You know, it's really a blight on the community here to have people drive through and look at something like this. You go over in eastern Washington, over in there, and look at the fine fields, everything looks nice. You drive back here and all you see is cotton-picken weeds. I'm sorry, but something has to be done and we either have to start off with a drastic measure and then work our way back or something, but it's been too many years, it's gotten away from us and I think the money needs to come, the Weed Board needs to do it and people need to realize if they own ground, they're responsible for it and they need to do something about it. Thank you.

Chairman Carey: Thank you.

Lee Bastian: You know, you guys put together such a good agenda today, I'm just going to, I didn't realize I'd be up here three times. I'm here representing Fish, Wildlife and Parks and noxious weeds is a real resource problems. Fish, Wildlife and Parks has a lot of properties that we have management authority over and weed control has always been a difficult issue to deal with. In today's world of government, I think it takes a collaborative effort and it takes a partnership effort in order to effectively go out and do anything. In an issue such as weed control, it's going to take all of us working together to make this happen. I know that financial resources are limited for everybody and so it takes the opportunity to try to match dollars together to make that happen. Fish, Wildlife and Parks is obviously real concerned about improving vegetation, the need to reduce noxious weeds and a real obvious one for us is to restore wildlife habitat back to some natural conditions. So, we just really encourage this measure to be put on the ballot so that, again, the citizenry can have an opportunity to respond. Thank you.

Chairman Carey: Thank you Lee.

Horace Brown: I'm Horace Brown and I hate weeds so I support the money problem.

Chairman Carey: Thank you Horace. Anybody else?

Lorene Folsom: My name's Lorene Folsom, I'm an educator here in town and here today because I'm on Spring Break until next Monday. I came prepared to talk about chemicals, but in deference to Mrs. Evans request, I won't do that specifically. But that is my concern. My concern is herbicides. I sat in these rooms less than a year ago and Citizens for a Weed Free Future came up and advocated aerial spraying in the County. It appears that they may be taking somewhat of a different stance now, but I have to say that my comfort level with this whole issue is not very high. I'm very concerned that an issue will go on the ballot with money appropriated for control of noxious weeds with nothing tied to the spending of that money. In preparation for this, I did spend some time on the Internet looking at some pesticides specifically, some herbicides specifically, also visited the inert issue. The chemicals are, it's an overwhelming problem with the chemicals and the majority of the them are tied to central nervous effects, that's how they kill things and I'm sure you all are very aware of the rise in things like Parkinson's disease, Alzheimer's disease. I went to a national conference recently, big concern about Attention Deficit Disorder in kids. Autism, alarming rise in Autism, and at this conference in San Francisco, presenters in the area of Attention Deficit and Autism were both saying there is something going on in the environment that's causing these problems. And you will see that over and over again if you review the literature for all of these central nervous problems. So I'm very concerned about any increase in use of chemicals, including herbicides, in this community. Those are my fears. If there is some way that this ballot language could be tied to a chemical as the very last resort, then I would feel much better about it. I'm really uncomfortable with an open ended spending account. Thank you.

Chairman Carey: Thank you.

Ralph Thisted: My name is Ralph Thisted, I live up Nine Mile and I agree with the gentlemen here that it ought to be a landowner's responsibility to take care of the weeds, or else someone else will do it. And listening to the last person, I don't know what's worse. I believe the weeds are worse than any chemical that can be put on the weeds. The deer are right in downtown Missoula, it's the only place they have left to eat, these hills are completely barren of any vegetation

that will support anything and I could go on forever, but I'm very much in favor of any weed control that we can do. Thank you.

Chairman Carey: Thank you Mr. Thisted. Anyone else?

John Rimel: My name's John Rimel and I'm a member of the Missoula County Weed Board and I wanted to offer my support of this initiative. The Weed Board has met, as you know, numerous time with Citizens for a Weed Free Future in drafting what we feel is a responsible Integrated Vegetation Management Plan. I do not see this as a spray weeds program. I see this really as an attempt to control weeds through Integrated Vegetation Management. There are a number of tools available, herbicides happen to be one of those tools, but there are a lot of alternatives out there. I do share with you, Commissioner Carey, your concern over having three issues on this ballot. As you know, I've been active in at least two of the campaigns, both the *Yes to Museums* campaign and the weed referendum, and I do fear that the result out of all of this will be at least one of them, probably, doesn't get voter approval. But then, I think, because of I-105, this is going to be an issue that we end up facing more and more as budgets tighten. But I would encourage your support of this and thank you for your support.

Chairman Carey: Thank you John. Anyone else?

Will Snodgrass: Good afternoon, my name is Will Snodgrass, I'm director of the Chemical Injury Communication Network here in Missoula and I am opposed to placing this on the ballot and I want to tell you very specifically why I'm opposed. I want to give you some specific reasons. I would also like to address some of the concerns that were raised by Mr. Carey and I will address those also. First of all the assumption that herbicides control weeds over time is inherently flawed, and it amazes me to hear people suggesting that we can put chemicals on the land and essentially poison the land and disturb the biota and control weed species which have in fact come into our area as a result of overgrazing, road building, deforestation and changes in the chemical composition of the atmosphere. I think that the data is quite clear on all of this, so until we actually fix the root causes of the weed problem, we're simply going to be throwing more and more chemicals on it and one of the local reporters remarked about this, saying, "It doesn't work but at least it's toxic," a little bit of macabre humor. The issue of resistance has been brought up today and the Missoulian, in fact, ran a news article two years ago about the problem of weed resistance in Montana itself, up in the Flathead Valley. The data is very clear on this, if you spray, you will need to spray again, you will need to spray more heavily and/or you will need to use stronger chemicals. That's cut and dried. The question here, I think, with respect to placing this on the ballot has a lot to do with the massive push by Dow Agrisciences Inc. We're looking at a \$100 million per year potential in profits here. Court records subpoenaed in Colorado, which I have and which I will provide for you, show that the University's own Peter Rice has taken \$26,000 from Dow, the transcripts are here, Page 944 and Page 45, from Boulder. We also have a massive advertising campaign that was conducted in the early '90s which addresses Bill's concerns and I have the campaign reports here with me, which I'll also provide. When you place this on the ballot, the voters, who will not enjoy what is called informed consent, because they have not been fully informed about the dangers of these chemicals, will also be placed on a very uneven playing field with respect to expenditures. For example, \$10,000 from the National Agricultural Chemicals Association spent. This page has a total of \$11,325 in donations from the big boys - Burlington Northern, \$2,000, Cieba-Giegy, \$1,000, the list goes on. I think there is a total of \$55,000 that was spent just on television advertising so you can anticipate that if you place this measure on the ballot, the uninformed voters will simply be outspent, those people who wish to protect their health and well-being and the health and well-being of their families. The fact that pesticides create resistance and that retreatment is necessary is reflected again and again in the University of Montana's own records from the Mount Sentinel hearings and also, they should be found in records here in your offices. We have another problem in that the information that's been provided for the County, upon which you would make a decision about the health and well-being of the land and the people, that information coming from the Health Department is contradictory. Mr. Nielsen has told you that there are no reproductive effects with respect to a Dow product call Tordon or Cloypurealid, another Dow product, when in fact the independent record clearly shows that there are some very serious reproductive effects. Moreover, Mr. Nielsen's comments fly in the face of his 1993 letter to School Superintendent Jake Block, in which Mr. Nielsen admits and writes on paper that the exposure to these compounds causes learning disabilities which brings us to the subject that was brought up by Ms. Folsom. I'm talking about aerosols here that can drift, according to the Missoulian's clippings, AP clippings, studies from Alberta, Canada, and China, done by the USDA, by Gene Shenn and the Cheucatchcee, these compounds are capable of drifting hundreds of miles in a few days and thousands of miles in a week. There is also the problem of false claims made by the proponents of pesticides, so here we have a citizens body that is being told by the industry that the products are safe, practically non-toxic, etc. If you look at the GAO report, RCED 90-134, these false claims are clearly listed, they're underlined, and the GAO says you may not make them, it's a violation of Federal law to do so. Yet the citizenry is being told again and again that the products are safe, another reason why this should not be placed on the ballot, in the absence of informed consent. We have concerns also about a conflict between your own oaths of office and placing this on the ballot. The oath of office for County Commissioners clearly states that you will protect the health and well-being of the citizenry by upholding the Montana State Constitution, which in fact says everyone has a right to a clean and healthful environment, and as Dr. Hank Peters out of Madison, Wisconsin, has pointed out to you this morning, weeds will always out-compete humans. They're going to be around long after we have poisoned ourselves with these chemicals. There's an executive order that's driving all of this, signed by President Clinton a year or two ago. It talks about control of noxious weeds, invasive species. But in the language of that order it clearly states that in attempting to control noxious weeds, and that's control, not eradicate, you will not cause environmental harm. So, placing an issue on the ballot that would foster the use of Dow Agrisciences chemicals, coincidentally, in the absence of informed consent, in the midst of false advertising and with full knowledge on the part of the County Commissioners, that there are some very grave potentials for human health effects: a) contradictory and b) very risky. Dr. William Croft told me this morning, if you're going to spray, and you can't stop them, then let them spray, but get the names of the people who made the decisions and the companies who sold the products, and let's haul them to court. I'm not a litigious person, but if that's what it takes and that's what it took to stop spraying in the '80s, then I'm all for that. The United States Forest Service has also placed a great deal of input into this process and I would like you to look at, both of you and Michael Kennedy as well, the list of questions that was put to the Forest Service of just a few years ago as part of an environmental assessment. If you can find answers to those questions in the US Forest Services documents to which we were referred, then you read a lot better than I do. The answers are simply not there, and many of the answers cannot be found anywhere, because according to the EPA's own testing people, these are the people who run the labs and do the health effects testing, there is no testing for neuro-behavioral effects, that would include the learning disabilities, the Parkinson's-type syndromes which involves the obliteration of the substantia-nigra of the brain by pesticide, that being the interface between thought and motion.

There's no testing for effects on the immune system and no testing for hormonal effects. Moreover, Ravalli County, and I would assume Missoula County, are both relying on an incredibly flawed report by Dr. Ann Fairbrother which was commissioned by the US Fish and Wildlife Service, which relies on 1950's science. It has missing data points that make some very perilous and unsupported assumptions and assertions. In closing, if you approve this plan, the helicopters will fly, the four-wheelers will be out with small tanks, the backpack sprayers will be about, you will aerosolize pesticides throughout this entire County. It will be an invisible but measurable fog, we have the tools to measure for that. You will create a killing zone and if you think now and are able to recognize that you have a problem with these clusters of birth defects, trisomy-type effects, nicks and breaks in DNA, if this plan is approved, that phenomenon will become magnified, again it will be measurable and you can be taken to court, and I believe you will and, as much as I have fought with you and enjoyed working with you, I can say, from the heart, that if you approve this plan, and people are injured, and they will be, and I believe you deserve to be taken to court, because that's where these types of things are settled. Greenpeace's writer, Carol Van Strum, who is well aware of Dow's driving force in this issue, who fought Dow Chemical in the late '70s, says, if this plan goes forward in the west, it will be Silent Spring Number 2. And I believe that she's correct. I'll make the court documents available to you along with the remainder of the facts that Dr. Henry Peters sent this morning, there were 10 pages and I didn't want to burden your fax machine with that. Do you have any questions?

Chairman Carey: Not at this moment, but perhaps we will later, Will. Thank you. Anybody else like to speak to this? Anyone else? Seeing no one, I'll close the hearing and open it up for any questions, comments.

Commissioner Evans: We have before us a request from Citizens for a Weed Free Future to put an issue on the ballot. They obtained many, many signatures from the folks to ask us to do so. I am going to move that we put it on the ballot and allow the folks of Missoula County to make their determination themselves, as to whether or not they feel this is a serious problem. I certainly think it is. The wildlife that we like to enjoy and the area in which we live is pretty much important to us because of the wildlife, is seriously impacted because there is not enough food. I live on the golf course and you'd think there'd be a lot of nice food there. Well, there is, in my yard and I find a lot of critters there because they're not high up on the mountains because there isn't anything for them to eat. I think we have a problem that needs taking care of. I would suggest that if you do not like the process, or you do not like the proposed methods of dealing with it, that you educate the public and let them make their decision. That's what democracy is about. And I move that we place this noxious weed mill levy, up to two mills, on the ballot in June.

Chairman Carey: Before I second that motion, I'd like to ask counsel or perhaps somebody in the audience if, I'm concerned about our intent and with the effort to make that intent, sort of, for the record, known over time. I know that future Commissioners may disagree with us and decide to authorize budgets that do different things, but I'm wondering if there's some way that we could at least put in the record my view that we ought to be using everything else, other management kinds of approaches first, and have toxic alternatives as the least, sort of our last choice. Is there some way we can do that, so that at least this board can.

Commissioner Evans: The hearing is closed Tony.

Colleen Dowdall: I believe the statute is really clear that you have that control as long as you're a Commissioner and as long as the Board votes in that manner, but I don't believe, I think that what you have said today does place it on the record and the materials that were presented that you're basing your decision upon is part of the public record, but I also think that it is, the statute is very clear that you have the ability as long as you are a Commissioner.

Chairman Carey: Okay. My follow up is that, I think, what you're saying, what the law says, is that with regard to a resolution, which Tony's urging us to do, is that that's good for the Commissioners of the moment, until they might decide to change their minds for some reason and do another resolution. So, it doesn't have any force of law.

Colleen Dowdall: Well, even a resolution has no force of law in this area, it is your budget authority that you have. And what the law says is that you can spend the noxious weed fund in the manner recommended by the Board, which is the Weed Board, to secure the control of noxious weeds. So, you have to make that decision, and future Boards have to make the decision based on what they want to do. I don't believe that you can decide now how you would spend it, without going through budget and recommendations of the Weed Board, nor can you control that in future Boards of County Commissioners.

Chairman Carey: And so, what we can do is, I mean, can we do something like urge the Weed Board, for example, to do some sort of statement saying that this is not about just going out and spraying the County, this is about finding all kinds of way before we would have to use an herbicide, just so another Weed Board, ten years down the road, at least knows the intent of this money was for a certain approach.

Colleen Dowdall: You can state that and it would have effect of law, but just stating the intent of the Commissioners.

Commissioner Evans: I would like to point out the second point on the gray sheet, the management tools that they're referring to, and you'll notice that herbicides are near the bottom. I'd also like to point out to everyone that when we appoint a Weed Board, and I think we've done a good job of that, we have a broad spectrum of folks on that Weed Board with a variety of differences of opinion, and I've not had the board come in here and say, "By darned we want to spray everything." That has not been their approach. Missoula County has probably the broadest biological control program in the State of Montana for which we have been soundly criticized, because we have done virtually nothing in the 20 years I've been here, that included a whole lot of spraying. I think the problem has got away from us and it's going to require an integrated program to deal with it. Not all of one kind, not all of another kind. That's why we appoint a board, people who are qualified to make scientific and land sensitive decisions and on that we based the appointments to the board, and on their recommendations we make the budget. So, I think this being a part of the record, and the past history of the way that we have tried to deal with them fairly well takes care of it, but there are those who are of a mind that they want it stronger than what we've got and I think that would be a mistake, because that's how we got where we're at.

Chairman Carey: And just so, and again, for the record, I think there's a great deal of validity in what you were saying, Tony, what Lorene said, what Will said, and I think more and more people are beginning to appreciate that, but that's not

really what's before us today. What's before us today, I think, is whether or not weeds in this County are a serious threat to the environment, to farms, and I think that there's no doubt that they are, and I think that there's no doubt that we don't have the resources now to combat that threat. And I think it's about developing a number of approaches that will combat weeds, prevent them from being here, nip 'em in the bud, so to speak. But, again, for the record, personally, toxics and herbicides ought to be the last resort. But in my view, there are times when they will be necessary. I don't envision helicopters flying over the valley. I would certainly, actively oppose wide spread spraying. I don't think that's what we're talking about here, I think we're talking about here, I think we're talking about a pretty intelligent approach to use, if we have the resources to use them, and I think we have to have those resources. Do you want to briefly comment?

Tony Tweedale: Yeah, Mr. Chairman, I just had a procedural question and actually I have a comment about the procedural questions that have been here. It's just what, the question is what I raised before, maybe for the attorney. Is there something in State law that requires when something goes on the ballot, even though it's only a County election, pro and con statements, official pro and con statements, something of that nature?

Colleen Dowdall: The language in your resolution comes directly from the statute. It states what the ballot measure needs to say, either for or against. Whether there needs to be pro and con statements exceeds my knowledge of election law.

Commissioner Evans: I think there is on a State level, but I've never heard it on a County level.

Tony Tweedale: Then, Mr. Carey, my comment was, I appreciate the opportunity to respond to the discussion just very briefly, is that given your concerns and my knowledge of Mr. Kennedy's concerns, what would be the effect of you voting against it today, on the understanding that there would be another vote. What's the effect of a 1-1 vote?

Chairman Carey: I don't think we have the time to consider it again. We have ...

Tony Tweedale: I was just going to mention that I did make an inquiry at the Secretary of State's office anticipating what you were going to say, and I received a fairly clear answer, I can't vouch for its correctness, but for County mill levy ballots there is no 90 or 70 day requirement, there's just this 45 day requirement, which gives enough time to print up the ballots. In other words, the question has to be adopted to be put on the ballot 45 days before the June election.

Chairman Carey: That's not the legal advice we've been given.

Tony Tweedale: That's exactly what I was told by an unnamed person at the Secretary of State's office, I called their toll-free number and was put through to the elections office, but I can't vouch for it more than that.

Chairman Carey: Again, from my point of view, what we're doing here is making it possible for the voters of the County to decide, to tell us whether or not, in fact, they think they have a serious weed problem, whether or not, in fact, they think they ought to have more resources to deal with it. It's not, I mean the case can be made that, no, this is really about spraying everything and herbicides are dangerous, don't do it. And that's not really what we're talking about right now, I don't think. Jerry Marks wants to say something. We could talk on and on about this subject.

Tony Tweedale: Given your concerns, if I were you, I'd be voting against it at this point.

Chairman Carey: Okay, thank you.

Jerry Marks: Jerry Marks from the Extension Office, also work with the Weed District. Being very closely involved in this process, working with both the Weed Board and the citizen group, we went through a lot of discussions and the project we did, or the document we did end up, did emphasize more than noxious weeds, trying to emphasize what you want to grow, more of a total vegetation management program and in the lengthier document is a whole section on Integrated Weed Management to try to emphasize the direction we're going. I use with, one of the things we've done so far in Missoula is work with landowner groups and we put together a number of those groups and one of the document I use in working with these is on an overhead or a slide, that there's many tools out there and to focus on what you want to grow, understand that ecology of the vegetation system, understand the life cycle of the noxious weeds and how do you use these tools or combination of tools. It is not just a herbicide program. To further substantiate this, one of the things the weed staff and I did this winter was have a good discussion on what is happening out there with the organized groups with the thought that if folks are more educated and if we go to the trust fund to obtain dollars to increase the amount of weed control, is it actually happening. And I was a little surprised by the results. We do see quite a variety of response. In other words, the smaller groups, the more subdivisions, there is a higher percentage of land treated with herbicides. In the larger landowners it's much lower. When we put all that together it looks like somewhere between 10% to 15% of the land within these organized groups is treated with herbicides. The biggest reason is not the herbicide or the health issue, it's economics. They can't afford it. They are very open to looking at other tools, whether it's grazing, biological, reseeding, and so I do need to emphasize, I think economics will play a large role in working with landowners in putting these projects together. I will be happy to stay afterwards and work with anybody and discuss this further.

Chairman Carey: I see an analogy here, at least in my own mind, between the way we're beginning to look at controlling weeds and the way we've gone about agriculture. A number of farmers over the last 15 to 20 years have transitioned away from pesticide use to organic farming and found that they've been able to make more money doing that because for one reason they're not spending a lot of money on herbicides and pesticides. And so, I think that, in my mind at least, we're beginning to look at how to control and manage weeds that way. We can transition away from just getting out the sprayer to all kinds of innovative and tried and true methods, for that matter. So, one last comment, Will.

Will Snodgrass: Again, I would like to stress the concept of informed consent which means informed voters. When we vote at the State level, there are usually pro and con arguments included and in many cases those arguments relate to issues which are not nearly as important as the health of one's self or the children. So in this case, if there's nothing to prevent you from putting a pro and con section on the ballot, I would urge you to do that. I would take some of the information that was in Fern Hart's room that came from the 1995 Citizens Weed Task Force, add to it some of the more recent science. That would be my recommendation. I think you have an obligation to do that as human beings and as leaders. I would also like to point out that if you go up to Holter Dam area you will find some flyers up there by the

Weed Group. They are posted in the little T-shaped entrances to the local restaurants and bars. They say hand pulling is the only thing that works and that's what they're doing. Plants are the only thing that I know of that can convert sunlight directly into food. We have to eat plants in order to get sunlight in that way. If plants cannot photosynthesize, they cannot live. So, they can be mowed, that is what's being done in California and all around this country. Putting more toxic chemicals on them is not going to take care of them in the long term. We know that for sure. So consider what you're actually doing when you vote to enable \$300,000, some of which could be spent on chemicals that will injure people.

Chairman Carey: Thank you. I'm certainly willing to take a look at whether or how we might be able to do a pro and con statement along, I have no idea whether it's possible or how we might do it, but it's worth looking into. There is a motion to approve submitting this to the voters, to the electors, submitting them the question of authorizing up to a two mill levy for control of noxious weeds in addition to the current mill levies. I'll second that motion. All those in favor?

Commissioner Evans: Aye.

Chairman Carey: Aye. That motion is approved. Any other business to come before us? Seeing none, we'll recess. Thank you all.

The Commissioners signed Resolution 2000-023 "To Submit to the Electorate the Question of a Permanent Increase in Property Taxes of up to Two Mills for Control of Noxious Weeds," which allows the mill levy question of support for control of noxious weeds to be put on the June 6, 2000 ballot.

A copy of the Citizens for a Weed Free Future document, "Missoula County Noxious Weed Mill Levy, June 2000," dated ver.3/20/2000 and a copy of the Citizens for a Weed Free Future document, "Proposal for the development of an expanded Missoula County Integrated Vegetation Management Program to improve vegetation and to reduce noxious weeds," dated ver.3/20/2000, were also an integral part of this hearing. Those documents may be found in the Noxious Weeds Mill Levy Question file in the Commissioners Office.

There being no further business to come before the Board, the Commissioners were in recess at 3:15 p.m.

THURSDAY, MARCH 23, 2000

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

Claims List -- Commissioners Carey and Evans signed the Claims List, dated March 23, 2000, batch numbers 560 and 561, with a grand total of \$30,469.39. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Memorandum of Understanding -- The Commissioners signed a Memorandum of Understanding with the City of Missoula for the design of a sewer interceptor serving El Mar Estates, Golden West and Mullan Road areas. The City will contribute ½ of the cost, not to exceed \$20,608.00. The term of the tasks to be performed will be in accordance with the timeline established in Amendment No. 2 of the contract. The document was forwarded to the City for signatures.

Approval of Request -- The Commissioners approved a Request from Sam Yewusiak of the Western Montana Fair to make the 5% reserve available for use for work on the fire and water line on the grounds of the Western Montana Fair, as Mountain Water Company requires that the money for the project (\$32,000) to be put up front.

Pay Increase -- The Commissioners approved a 5% Pay Increase for Hal Luttschwager, Risk Manager, retroactive to November 7, 1999.

Other items included:

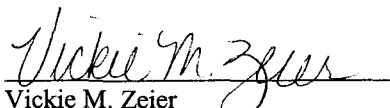
- 1) The Commissioners appointed Carl Sponseller to fill an unexpired term as a member of the Missoula Urban Transportation District Board. The term will run through December 31, 2001.

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

FRIDAY, MARCH 24, 2000

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

Site Inspections -- In the forenoon, Commissioner Carey accompanied County Surveyor Horace Brown to Seeley Lake for site inspections at the Double Arrow Ranch regarding the requests to vacate a portion of Lodge Way and to vacate a portion of Old County Road.


Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chair
Board of County Commissioners

MONDAY, MARCH 27, 2000

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was out of the office the week of March 27th through the 31st.

Letter – The Commissioners signed a Letter to Ron Daley of Daley Construction, Incorporated, informing him of the approval of the Amendment to the Condition of Approval #1 for Laura's Addition Summary Subdivision at the Office of Planning and Grants meeting on March 27, 2000.

TUESDAY, MARCH 28, 2000

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

ADMINISTRATIVE MEETING

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

Lease Agreement – The Commissioners signed a Lease Agreement with Joe and Mary Ellen Stubb and Don and Karen Luke, a partnership, for the purpose of operating and maintaining a batting cage concession at Fort Missoula, described by Certificate of Survey #4898. The total lease amount will be \$1,500.00 in six equal payments of \$250.00 each. The lease term will be one year, commencing on the date of the Agreement, with the Park Board to recommend whether or not to enter into a longer term lease by the end of the current lease.

Memorandum of Understanding – Chairman Carey signed a Memorandum of Understanding with Montana Legal Service, as part of their obligation under the Stop Violence Against Women Act grant, to compensate the advocates for training. The document was returned to Cindy Wulfekuhle, Office of Planning and Grants, for further handling.

Resolution – Chairman Carey signed Resolution No. 2000-024 (paving of Snowdrift Lane), relating to Rural Special Improvements No. #8469, creating the District for the purpose of undertaking certain local improvements and financing the costs thereof and incidental thereto through the issuance of Rural Special Improvement District Bonds secured by the County's Rural Special Improvement District Revolving Fund and establishing compliance with reimbursement bond regulations under the Internal Revenue Code.

Request for Action – The Commissioners signed a Request for Action for the Cote Lane Walkway project, which was prioritized and approved at the March 22, 2000 Public Meeting, and will be sent to Helena to be filed with the State CTEP by March 31, 2000. Total project cost will be \$15,119.09. The Cote Lane CTEP Priority is listed as #2. The document was returned to the County Surveyor for further handling.

Request for Action - The Commissioners approved a Request for Action for payment to the Office of Planning and Grants in the amount of \$3,750.00 to provide matching funds for the Congestion Mitigation and Air quality (CMAQ) grant which supports the Missoula Transportation demand Management (TDM) program.

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

WEDNESDAY, MARCH 29, 2000

The Board of County Commissioners met in regular session; a quorum of members was present in the forenoon. Commissioner Carey left late in the forenoon to attend a Firewise Communities Workshop held in Stevenson, WA, and Commissioner Kennedy was out of the office all afternoon.

Claims List – Commissioners Carey and Kennedy signed the Claims List, dated March 28, 2000, batch numbers 563, 564, 566, 569 and 570, with a grand total of \$94,532.00. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Kennedy signed the Claims List, dated March 28, 2000, batch numbers 567, 568 and 572, with a grand total of \$78,790.11. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Kennedy signed the Claims List, dated March 29, 2000, batch number 573, with a grand total of \$5,000.00. The Claims List was returned to the Accounting Department.

PUBLIC MEETING

The Weekly Public Meeting scheduled for this date was cancelled as the Commissioners were gone.

THURSDAY, MARCH 30, 2000

The Board of County Commissioners did not meet in regular session. Commissioner Carey was attending the Firewise Communities Workshop in Stevenson, WA, through Friday, March 31st.

Indemnity Bond – Acting Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Ruby's Inn and Convention Center as principal for Warrant #357035 issued December 7, 1999 on the Missoula County 4003 Fund in the amount of \$633.36 now unable to be found.

Indemnity Bond – Acting Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming John M. Robinson as principal for Warrant #75835 issued February 18, 2000 on the Missoula County 78-42 Fund in the amount of \$233.87 now unable to be found.


Annual Progress Report – Acting Chair Kennedy signed the Annual Progress Report for Missoula County: Turning Point's Share House Supportive Housing Program, Transitional Housing for the period of January 2, 1999 to January 1, 2000. The document was returned to Nancy Harte, Office of Planning and Grants, for further handling.

Application – Acting Chair Kennedy signed the USDA Forest Service Rural Community Assistance Application Summary Form for Montana Committee for the Humanities of Lolo and Seeley Lake, Missoula County, to receive and administer federal funds for the purpose of providing approximately 57 public programs, relating to humanities topics, from its statewide Speaker's Bureau in 24 rural Montana communities. The document was forwarded to Debra Austin at Lolo National Forest.

FRIDAY, MARCH 31, 2000

The Board of County Commissioners did not meet in regular session. Commissioner Kennedy was out of the office all afternoon.

Indemnity Bond – Acting Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Ya Vang as principal for Warrant #257135 issued September 10, 1999 on the Missoula County Payroll (7910) Fund in the amount of \$184.88 now unable to be found.


Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chair
Board of County Commissioners

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MONDAY, APRIL 3, 2000

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

Claims List -- Commissioners Carey and Evans signed the Claims List, dated March 31, 2000, batch numbers 575, 577, 578, 579 and 580, with a grand total of \$101,184.97. The Claims List was returned to the Accounting Department.

Claims List -- Commissioners Carey and Kennedy signed the Claims List, dated March 31, 2000, batch number 567, with a grand total of \$922.21. The Claims List was returned to the Accounting Department.

Claims List -- Commissioners Carey and Evans signed the Claims List, dated March 31, 2000, batch numbers 581, with a grand total of \$2,080.35. The Claims List was returned to the Accounting Department.

Monthly Report -- Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Kathleen Breuer, for the month ending March 31, 2000.

Extension Request -- The Commissioners approved a 6-month Extension of the final plat approval deadline for Forest View Summary Subdivision, in accordance with the Office of Planning and Grants, in a letter to Nick Kaufman of WGM Group in Missoula. The new filing deadline will be October 7, 2000.

TUESDAY, APRIL 4, 2000

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

ADMINISTRATIVE MEETING

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

Professional Services Contract -- The Commissioners signed a Professional Services Contract with Northwoods Tree Service for the purpose of removing trees and grinding stumps as directed by the County Surveyor's Office. The term will be from March 1, 2000 to completion of performance as requested.

Contract -- The Commissioners signed a Contract with Williams Communication Solutions for installing new phone equipment in the Library to connect Extension Services through the channel banks that the Library currently uses. The total amount shall be \$33,393.73. The terms of the Contract are listed on the applicable Schedule 1. The document was returned to Teresa Emery in Telephone Services for further handling.

Agreement -- Chairman Carey signed an Agreement between Missoula County Public Schools and Missoula County Youth Court for the purpose of providing various Deputy Probation Officers to work with students returning to school from pre-trial placement or post-trial disposition placement, students in school and under the jurisdiction of juvenile justice and students at risk of entering the juvenile system. The amount will not exceed \$32,361.00. The term will be January 1, 200 through September 30, 2000. The document was returned to Judge Larson's Office for further handling.

Resolution -- The Commissioners signed Resolution No. 2000-025, an application for Tax Deed on two parcels: Bay Meadow Addition, as recorded in Book 14 of Plats at Page 84, and Lot 2 of Raser Commercial Tracts No. 1, a platted subdivision in Missoula County.

Resolution -- The Commissioners signed Resolution No. 2000-026, a sale of two Tax Deed properties (Bay Meadow Addition, as recorded in Book 14 of Plats at Page 84, and Lot 2 of Raser Commercial Tracts No. 1, a platted subdivision in Missoula County), to be held in Room 201 of the Missoula County Courthouse in Missoula, Montana at the hour of 1:30 p.m. on April 26, 2000.

Reappointment -- The Commissioners approved the reappointment of Lt. Scott McDonald to the position of Deputy Coroner as per a request from Sheriff Douglas Chase.

Letter of Request -- The Commissioners voted to support a request from Donald Howard, Information Services Section (DNRC) to change the name of Kreis Lake to Kreis Pond (located in the Nine Mile area) as it has commonly been referred to as Kreis Pond for over 50 years and is, in fact, a manmade irrigation pond.

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

WEDNESDAY, APRIL 5, 2000

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

Monthly Report -- Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John Odlin, for the month ending March 31, 2000.

Resolution -- The Commissioners signed Resolution No. 2000-027 to amend the Missoula County zoning resolution by changing the zoning from C-A3 to C-11 on property legally described as Lot 8, Northgate Development Park, located in the NE ¼ and SE ¼ of Section 1, T 13 N, R 20 W, P.M.M., Missoula County, Montana.

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PUBLIC MEETING - April 5, 2000

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

Chairman Carey announced that the owners have withdrawn their request to vacate a portion of Old Hayes Creek Road and it has been deleted from the agenda.

An audience member asked if the Old Hayes Creek Road issue was gone forever.

Michael Sehestedt stated that this petition is dead. If the owner wants to revisit the issue, a new petition will have to be filed and the public process will begin again.

Commissioner Kennedy stated that there was a sale pending conditioned on abandonment of that road. The purchasers of the land have abandoned that as a condition, withdrawn the petition and the sale is going through. The new owners and the Forest Service are in discussion about what can happen to maintain the public access in that area. It is not known if the results of those talks will result in a new petition. For now, it is a dead issue.

Chairman Carey also announced that the Public Hearing on the Rock Creek Airpark has been postponed until Wednesday, April 19, 2000.

Public Comment

None

Routine Administrative Actions

Commissioner Kennedy moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$312,979.63. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Consideration of and Decision: Resolution Authorizing Commitment Agreement with DNRC Regarding General Obligation Bond Issue for Western Montana Fairgrounds Water Project

Sam Yewusiak, Manager, Western Montana Fair, stated the request to secure this loan is based on the fact that, to meet new Federal standards, the Fair must have backflow valves in place to protect Mountain Water lines. To facilitate this, a number of other things had to be changed also. The fire lines need to be redone to improve fire safety, and there are a number of other public safety issues that must be improved. All these issues are part of this loan. WGM Group has drawn up plans which have met with approval of all parties concerned, including City-County Health Department, the fire department and Mountain Water. The loan has been assured through the state and the fair needs the Commissioners permission to proceed with the bid process, which will begin after the loan has been secured.

Commissioner Kennedy stated that the Health Department this week had expressed some concerns they still had about the project. He wanted to know if those concerns had been addressed and were included in this loan application?

Sam Yewusiak stated those concerns were all part of the entire water project at the fair. It has been a long process because of all the various agencies and parties involved. It had been hoped to be done with the project by now, but it could not be accomplished that quickly.

Commissioner Evans moved that the Board of County Commissioners approve the resolution authorizing the Commitment Agreement with DNRC regarding the General Obligation Bond Issue for the Western Montana Fairgrounds Water Project and authorize the Chair to sign all necessary documents. Commissioner Kennedy seconded the motion.

Commissioner Kennedy stated this project is important. It is a large capital expenditure on the part of the Fair. A fiscal analysis of the proposal was done and found that the overall costs, while important to protect public health and sanitary conditions at the Fair, will not impose additional expense on the taxpayers of Missoula County. He then called for the question.

The motion carried on a vote of 3-0.

Continuation of Hearing and Decision: Request to Vacate a Portion of Old Hayes Creek Road (Blue Mountain Area) - Continued from February 23, 2000 - WITHDRAWN PER PETITIONER'S REQUEST

As announced at the beginning of the Public Meeting, this request was withdrawn per the petitioner's request.

Bid Award: Two (2) 11-Foot Reversible Truck Snow Plows (Road Department)

Horace Brown stated that these four bids for equipment for the Road Department, if approved, would be purchased in late fall for use next year. Money is available for the purchase of the equipment.

This is a request to award a contract for two (2) 11-foot reversible truck snow plows (Bid #2003-03). The bids were opened Monday, March 27, 2000, at 10:00 a.m., with the following results (single unit price only): Henke Manufacturing - \$5,105.00 (with in-state 3% preference \$5,258.15); Critzer Equipment - \$5,439.00 (with in-state 3% preference \$5,602.17); Pierce Manufacturing - \$5,100.00 (with in-state 3% preference \$5,100.00); and Kois Brothers - \$6,040.00 (with in-state 3% preference \$6,040.00). It is the recommendation of the Road Department to award the bid to Pierce Manufacturing for two (2) truck snow plows in the amount of \$10,200.00.

Commissioner Kennedy moved that the Board of County Commissioners award the bid for two (2) 11-foot reversible truck snow plows to Pierce Manufacturing in the amount of \$10,200.00. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Bid Award: Two (2) 10-Yard Slide-In Sanders (Road Department)

This is a request to award a contract for two (2) 10-yard slide-in sanders (Bid #2003-01). The bids were opened Monday, March 27, 2000, at 10:00 a.m., with the following results: Warren, Inc. - \$17,916.00 (with in-state 3% preference \$18,453.48); Critzer Equipment - \$16,442.00 (with in-state 3% preference \$16,935.26); Pierce Manufacturing - \$16,860.00 (with in-state 3% preference \$16,860.00); and Kois Brothers - \$18,198.00 (with in-state 3% preference \$18,198.00). It is the recommendation of the Road Department to award the bid to Pierce Manufacturing for two (2) 10-yard slide-in sanders in the amount of \$16,860.00.

Commissioner Kennedy moved that the Board of County Commissioners award the bid for two (2) 10-yard slide-in sanders to Pierce Manufacturing in the amount of \$16,860.00. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Bid Award: One (1) Used Tandem Axle Truck/Chassis (Road Department)

This is a request to award a contract for one (1) used tandem axle truck/chassis (Bid #2003-02). The bids were opened Monday, March 27, 2000, at 10:00 a.m., with the following results: Missoula Truck Sales - \$13,850.00; Zomer Truck Company (on 5 different possibilities) - \$26,750.00; \$30,000.00; \$18,500.00; \$23,250.00; and \$32,750.00. It is the recommendation of the Road Department to award the bid to Missoula Truck Sales for one (1) truck/chassis in the amount of \$13,850.00.

Commissioner Kennedy moved that the Board of County Commissioners award the bid for one (1) used tandem axle truck/chassis to Missoula Truck Sales in the amount of \$13,850.00. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Bid Award: Traffic Line Paint (Road Department)

This is a request to award a contract for traffic line paint (Bid #2003-04). The bids were opened Monday, March 27, 2000, at 10:00 a.m., with the following results:

	50 Gallon Drums		Bulk Delivery	
	Yellow	White	Yellow	White
TMT Pathway	\$12,750	\$18,900	\$11,900	\$18,225
Centerline Industries	\$10,676	\$14,715	\$11,373	\$15,822
Pervo Paint Company	\$16,150	\$24,165	\$15,725	\$22,815

It is the recommendation of the Road Department to award the bid to Centerline Industries for traffic line paint in 50 gallon drums in the amount of \$25,391.

Commissioner Kennedy moved that the Board of County Commissioners award the bid for traffic line paint to Centerline Industries (in 50 gallon drums) in the amount of \$25,391. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Decision: Request to Vacate a Portion of Lodge Way (Double Arrow Ranch)

This is a petition to abandon "A portion of Lodge Way from the northeast boundary of Arrowhead Subdivision, Phase 1, to the end of said Lodge Way at its intersection with the former location (now vacated) of Double Arrow Road located in Section 11, Township 16 North, Range 15 West, PMM, Missoula County, Montana (Double Arrow Ranch)."

The reasons for the request are as follows:

1. This portion of Lodge Way was never constructed, and was originally planned to connect Lodge Way back into Double Arrow Road.
2. Double Arrow Road has since been relocated, and no longer exists in the location where Lodge Way would have connected thereto.

The following landowners have been notified: Double Arrow Enterprises Inc.

A public hearing on this matter was conducted on Wednesday, March 15, 2000. A site inspection was conducted by County Surveyor Horace Brown and Chairman Carey on Friday, March 24, 2000.

Horace Brown stated that this portion of the road had never been constructed and there was no use for the right-of-way as far as the County was concerned. He recommended that the petition to abandon it be granted.

Commission Evans moved that the Board of County Commissioners abandon a portion of Lodge Way from the northeast boundary of Arrowhead Subdivision, Phase 1, to the end of said Lodge Way at its intersection with the former location (now vacated) of Double Arrow Road located in Section 11, Township 16 North, Range 15 West, PMM, Missoula County, Montana (Double Arrow Ranch). Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Decision: Request to Vacate a Portion of Old County Road (Double Arrow Ranch)

This is a petition to abandon "A portion of the old County Road/Highway right of way from the southwest boundary of Book 373 (M), Page 1929, to the southeast right of way of Double Arrow Road located in the northwest 1/4 of Section 14, Township 16 North, Range 15 West, PMM, Missoula County, Montana."

The reasons for the request are as follows:

1. This is a portion of an old highway/county road right of way that was deeded to Missoula County in 1929 (Book 103 of Deeds Page 286 - Deed Exhibit #38), which has since been replaced by a new highway in more recently acquired right of way.
2. As this road no longer exists, there is no reason to retain the right of way.

The following landowners have been notified: Double Arrow Golf Resort and The Meadows Property Owners Association Inc.

A public hearing on this matter was conducted on Wednesday, March 15, 2000. A site inspection was conducted by County Surveyor Horace Brown and Chairman Carey on Friday, March 24, 2000.

Horace Brown stated that this portion of an old County road now runs through a golf course. Where the road was is still visible but has been incorporated into the grassy area of the golf course and the County has no use for the right-of-way. He recommended that the petition to abandon it be granted.

Commissioner Evans moved that the Board of County Commissioners abandon a portion of the old County Road/Highway right of way from the southwest boundary of Book 373 (M), Page 1929, to the southeast right of way of Double Arrow Road located in the northwest 1/4 of Section 14, Township 16 North, Range 15 West, PMM, Missoula County, Montana. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Hearing: Miller Family Transfer

Colleen Dowdall stated that she had received a message from Mr. Miller. He was unable to attend today as he was ill and wanted to reschedule the hearing. She requested that this matter be postponed until Wednesday, April 26, 2000.

Commissioner Evans moved that the Board of County Commissioners postpone the hearing on the Miller Family Transfer until Wednesday, April 26, 2000. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Hearing: Herzer Family Transfer

Chairman Carey opened the public hearing.

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described in the E 1/2, S 1/2, N 1/2, SE 1/4, SE 1/4, in Section 35 of Township 11 North, Range 20 West.

Mary K. and Elmer O. Herzer have submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 5 acres in size located in the Florence area, near Chief Looking Glass Lane, on Custer Lane. The Herzers propose to create one additional parcel for transfer to their son, Philip Richard Onas Herzer, approximately an acre in size, with a four acre remainder.



These parcels were originally created in the late 1960s and early 1970s as transfer by deed, which was legal at that time. The history of the parcel is as follows: 1969 – Book 19, Page 185, 10 acre parcel transferred from Maclay to Sheldon; 1971 – Book 33, Page 1467, 5 acre parcel transferred from Sheldon to Carr; 1977 – Book 106, Page 748, 5 acre parcel transferred from Carr to Zachariasen; and 1997 – Book 508, Page 482, 5 acre parcel transferred from Zachariasen to Herzer.

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

Kathy Herzer was present and came forward to answer any questions the Commissioners might have.

Chairman Carey stated the Family Transfer process allowed the Commissioners to ask questions to determine if the intention of the request was to transfer property to a family member and if there were plans to further subdivide the property.

Kathy Herzer stated they were giving the property to their oldest son and there were no plans for further subdivision.

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

Commissioner Evans moved that the Board of County Commissioners approve the request by Mary K. and Elmer O. Herzer to create a new parcel by the use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Consideration: Westre's Farm (2 lot Subdivision) – Southeast of Frenchtown

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

This is a request by Jack Westre, represented by Eli and Associates, to create Westre's Farm, a 2 lot subdivision south of Pulp Mill Road. The proposal would split a 10.33 acre parcel into two 5.16 acre lots. This division of land had already been approved by the Board of County Commissioners through the Family Transfer process, however, it was never filed.

The property is primarily level with irrigated alfalfa fields covering approximately 8 acres on the west side of the property. The main channel of the Frenchtown Irrigation Ditch is along the western boundary and there is a smaller irrigation ditch along the southern boundary of the property.

There is an existing home on Lot 2 and Lot 1 is currently vacant. The property is unzoned and the 1975 Missoula County Comprehensive Plan designates most of the parcel as Open and Resource with a recommended residential density of one dwelling unit per 40 acres. A small portion of the west side of the property is designated as Heavy Industrial due to its proximity to the mill. Lots in the area generally range in size from large tract agricultural land to smaller parcels used for residential development and/or agriculture. Although the proposal is not completely consistent with recommended density, staff found it to be in substantial compliance with the goals of the Comprehensive Plan for the area, particularly because of the applicant's proposal to encourage sustained agricultural protection by placing a no build zone on the plat in the area that is presently under agricultural production.

The property is in the Frenchtown area and is accessed by taking Mullan Road to Moccasin Lane to Ruple Lane. Moccasin Lane is a County road that does not meet County road standards. The County Surveyor has supported an RSID waiver for improvements to this road as noted in Condition 3. Ruple Lane is a private road and the applicant is proposing to improve it to meet County standards for road width. Ruple Lane also exceeds the maximum length for a cul-de-sac and requires a variance. Staff supports that variance request. Frenchtown Fire District has no problem with the request. The applicant's proposal also states that homeowners will bear responsibility for driveway and road maintenance.

The subdivision will be served by a shared private well on Lot 1 and individual septic systems. Staff recommends a condition that a well use and maintenance agreement is filed and a utility easement shown on the plat for the water line from the well on Lot 1 to the home on Lot 2 to ensure that both homes have water supply. The subdivision is part of the Frenchtown Fire District and the nearest station is approximately 5 miles from the site. Conditions for a water system RSID waiver and a \$100 per new lot fire fee are included. This is primarily agricultural land and there are no identified areas of riparian resource.

Bill Otten of Missoula County Weed Control requested that lot owners be required to maintain lots in compliance with the Missoula County Noxious Weed Regulations. Staff recommended Condition 7, a revegetation plan, be filed with the County.

There are three variances required from Subdivision Regulations for this proposal. The first is for the installation of sidewalks. Staff supports this variance request as there are no connecting sidewalks in the area. The second variance is for the average depth to be greater than three times its average width. The design presented by the applicant supports preservation of agricultural use and staff support this variance request. The third variance is for cul-de-sac length as mentioned earlier.

Staff supports approval of the subdivision subject to the seven conditions listed in the staff report.

Chairman Carey asked for public comments.

Ron Ewart, Eli and Associates, developer's representative, was present, as was the applicant, Jack Westre. He thanked OPG for their work on this proposal. This was not an easy proposal but there were some positive benefits to be revealed when the whole picture was looked at. This is beautiful agricultural land. The net result of this proposal is to place one more home next to the road to allow the remainder of the land to be maintained as agricultural. Mr. Westre lives in the home currently on the property. He has a grown son and daughter and he hopes one of them would live next to him. Mr. Westre looked at both the Family Transfer option and the subdivision option. He preferred to use the subdivision process as it was cleaner with more in depth review. He has volunteered to spend the money necessary to upgrade Ruple Lane. There are other 5 acre tracts to the south and north of this property, and the covenants allow 5 acre tracts. They were in agreement with the Conditions of Approval.

Commissioner Kennedy stated he appreciated that Mr. Westre had chosen to use the subdivision review process rather than the Family Transfer process.

Jack Westre stated he wanted his family to be close and chose the subdivision review process as it was much cleaner.

There were no further public comments.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision; approve the variance request from Section 3-3(1)(E) of the Missoula County Subdivision Regulations that states that no lot shall have an average depth greater than three times its average width; and approve the variance request from Section 3-2(3)(A) of the Missoula County Subdivision Regulations that states that the maximum cul-de-sac length shall not exceed 1,000 feet in length, all based on the findings of fact set forth in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve Westre's Farm Summary Subdivision based on the findings of fact in the staff report and subject to the conditions in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Westre's Farm Conditions of Approval:

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

"Areas designated as no-build are designated as such for the purpose of encouraging agricultural production and protecting agricultural water user facilities." Applicant shall define no-build area on the plat, subject to review and approval of OPG. *Subdivision Regulations 3-1(C) and OPG recommendation.*

2. The County Surveyor shall review and approve grading, drainage and plans for improvements to Ruple Lane and drainage plans for the site prior to final plat approval. *Subdivision Regulations 3-2(2) and 3-4.*

3. The following statement shall appear on the face of the final plat and in each instrument of conveyance:

"Acceptance of a deed for a lot within this subdivision constitutes a waiver of the right to protest a future RSID/SID for improvements to Moccasin Lane, including the installation of pedestrian walkways or bikeways, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land." *Subdivision Regulations Article 3-2(2) and County Surveyor recommendation.*

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

5. The following statement shall appear on the face of the final plat and in all instruments of conveyance:

"Acceptance of a deed for a lot within this subdivision constitutes a waiver of the right to protest a future RSID/SID for public water system adequate for fire protection, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land." *Subdivision Regulations Article 3-7(2).*

6. An utility easement shall be shown on the plat for the waterline from the well on Lot 1 to Lot 2 and a well use and maintenance agreement shall be filed with the Missoula County Clerk and Recorder's Office prior to final plat approval, subject to review and approval by OPG and the County Attorney's Office. *Subdivision Regulations 3-6 and County Attorney recommendation.*

7. A Revegetation Plan for Disturbed Sites shall be approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed Control recommendation.*

Hearing: Mountain Heights Subdivision (7 lots) – Upper Miller Creek

Chairman Carey opened the public hearing.

Nancy Heil, Office of Planning and Grants, presented the staff report. She stated that Steve Hall, the applicant, anticipated the meeting taking longer than it had and he was on his way to the Courthouse. She would go ahead with the staff report in the meantime.

The applicants, Steve Hall and Robert Wimet, are requesting approval for a 7 lot subdivision from a 5.06 acre parcel. The land is located in Upper Miller Creek, north of the recently approved Invermere Subdivision, just west of Upper Miller Creek Road. This subdivision was originally approved in 1997 as a 5 lot summary subdivision. The applicants had proposed a cul-de-sac to serve the lots for that subdivision. As a condition of approval, the plat was to be designed with a through street. That summary plat was never filed and the applicants submitted a new design for 7 lots on that same parcel, that has a through street and a different lot configuration. The property is zoned C-RR2, Residential, with a gross maximum density of 2 dwelling units per acre. It is in a primarily residential area. Lands to the south and west of this property were recently annexed into the City and this property will likely be annexed when it connects to City sewer.

The property is accessed from Upper Miller Creek Road to St. Michael Drive to St. Francis Drive onto proposed St. Augustine Drive. The through street that serves this subdivision will connect with Marias Street, which serves Invermere Subdivision to the south. One of the first conditions of approval is that street be named Marias Street, so that it matches the street to the south.

The street section in Invermere for Marias Street is 32 feet, due to the density of that subdivision. The applicants for Mountain Heights proposed a 24 foot width and 8 foot landscaped islands at both ends of the street section. They stated that this design element would facilitate narrowing of the street from a 32 foot width to a 24 foot width. For consistency in road design, the Surveyor originally recommended that the street as it runs through this subdivision be 32 feet to match Invermere to the south. That was the originally recommended Condition 2. Planning Board, however, recommended the applicant be allowed to return to their original proposal for a 24 foot paved roadway.

Planning Board recommended some additional requirements for parking and signage as noted in the Request for Commission Action. Other conditions related to roads address the maintenance of the landscaped islands.

There is also a condition that there be a one foot no access strip on the northern boundary of Lot 7 so that lot has to access off of Marias Street.

There is a condition that the subdivider contribute to the fund for improvements to the Miller Creek Road System in the amount of \$1,800 per lot, which has been fairly consistently applied to subdivisions in the Miller Creek area.

The fire chief commented that emergency access could be difficult if the proposed connection through to Invermere wasn't constructed soon or at the same time as these improvements were done. He recommended there be a temporary turnaround installed at the end of Marias Street until it went through. There is a possible change to that condition that might allow the applicants to work out an emergency access all the way through that gives some flexibility on how to address this concern.

This is in an area that has had some drainage problems in the past and there are a couple of conditions related to drainage on the subdivision. One has to do with as built plans being provided to the Surveyor's Office and the other is that there be a waiver of the right to protest a regional RSID/SID for storm drain improvements. The subdivider has proposed boulevard sidewalks along the road in the subdivision, on both sides of the road. Consistent with the Marias Street section to the south, there is also a recommendation there be street trees every 30 feet along the boulevard.

Mountain Water will be able to provide water service to the subdivision and it will connect to a City sewer line. That line is currently located in St. Thomas Street.

The applicants have requested a variance from the parkland requirement. They stated that the subdivision to the south had enough land to accommodate a public park and that the slightly larger lot sizes in Mountain Heights were intended to preclude the need for park space. They proposed instead to include an SID for maintenance of parkland in Invermere. Both staff and Planning Board recommend denial of this variance request. There are two conditions of approval related to parks, one is that cash in lieu is provided and the other is a waiver of the right to protest an SID for park maintenance.

There are two conditions related to the natural environment, one that the covenants address living with wildlife issues and another that weed concerns are addressed. Finally, with respect to public health and safety, the property is inside the air stagnation zone and Health Regulations require that all driveways be paved at least 20 feet back from the edge of the asphalt, or from the outside boundary of the right-of-way, whichever is longer. Planning Board recommended that the driveways be paved for their entire length as noted in a change to Condition 18. Conditions 8 and 9 address some additional air quality concerns.

Staff is recommended denial of the parkland variance request and approval of the subdivision request, subject to 18 conditions with Planning Board amendments to Conditions 2, 7, 15 and 18. Per a discussion with Steve Hall this

morning about the changes discussed at Planning Status, he had a question about the stop sign requirement on St. Francis Drive in Condition 2 and also wanted to clarify the road width question.

Commissioner Kennedy asked what Mr. Hall's question was on the stop sign.

Nancy Heil stated the applicants would like to see a stop sign at St. Thomas Drive and St. Francis Drive, with a yield sign at Marias. She told him the Surveyor's Office would evaluate the need for appropriate signage. The road width question was that the applicant's intention was to have a 24 foot paved road width. The condition as currently written talks about back of curb to back of curb. Their intention is to have a 24 foot road and then the curbs then the boulevard and the sidewalks.

Commissioner Evans stated that with regards to the width of the street and the landscaped islands, she wanted it clear and in the record that the driving width of the road is exclusive of the landscaped islands. That means the road extends out far enough beyond the landscaped islands to allow for a proper driving width.

Steve Hall stated he was one of the developers. He understood Commissioner Evans concern and that was the way the road was designed. He has had a chance to look at the conditions. There was some discussion on the issue of the stop sign. A stop sign was requested at the corner of St. Francis and St. Thomas. Planning Board has indicated they felt the stop sign should go on this subdivision at the intersection of Marias and St. Francis. It seems that traffic needs to be stopped again at St. Francis and St. Thomas and he would like to do away with the stop sign at the Marias intersection and put a yield sign or some other appropriate signage up. The other item discussed was the intent to have a 24 foot wide roadway with 2 foot curbs on each side for a total of 28 feet, 12 feet per driving lane. Maintenance of the islands will also be handled by a Homeowners Association. They also would have preferred to have the street named St. Augustine, but understood that was not possible. The name will be changed on all the plans to identify it as Marias Street. He also asked for some direction on addresses.

Commissioner Evans stated Horace Brown would provide information about addressing each lot.

Steve Hall asked about the secondary emergency access.

Commissioner Kennedy stated they wanted to offer it as an option. Construction of a cul-de-sac may be expensive and having a rough graded road may be most cost effective. It is up to the developer on how they want to address the concern, but they did want to offer some options.

Steve Hall stated it would make more sense to finish the street. He asked if it required a continuation to Marias and Meriwether or could there be a temporary turnaround on Invermere to the south.

Commissioner Kennedy stated the only concern was from the fire district for a turnaround. This is providing the applicant with the option of putting in an emergency access through the subdivision if it is less expensive for them. It is up to the applicant how they want to address the question in their best interest.

Horace Brown stated the applicant needs to supply the Surveyors Office plans of how they are going to accomplish this emergency access.

Nancy Heil stated that part of the condition is that the fire district would review and approve the turnaround plan as well. She commented on the signage question. The condition currently read "a stop sign shall be placed at the northerly end of the road where it intersects St. Francis Drive." That might be amended to say "appropriate signage shall be placed" and remove the stop sign reference.

The Commissioners agreed with the change to Condition 2.

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

Commissioner Kennedy stated the way the condition was originally written regarding the road width was for a narrow width than Mr. Hall described. The developer is not being required to put in a 28 foot roadway, the requirement is a 24 foot width.

Steve Hall stated it was his understanding from the engineer that 24 foot was the standard then the 2 foot curb on each side was added, for a total of 28 feet back to back. That wasn't clarified during the Planning Board hearing.

Horace Brown stated his primary concern was where the 32 foot width in Invermere meets the 24 foot width of this subdivision. At that point it has to be 32 feet to match up, then it can narrow to the 24 feet. He wanted to be sure the transition between the two widths was addressed and on the record.

Commissioner Kennedy stated he wanted to continue with the discussion of 24 feet versus 28 feet. There is a drainage problem in the area and the wider the road, the more pavement there is to possibly increase the drainage problem. He asked Horace Brown if he had a problem with the condition the way it is written at 24 feet.

Horace Brown asked if that included the curb and gutters?

Commissioner Kennedy stated he meant back to back of curb and gutter.

Horace Brown stated he had no problem as long as there was no parking.

Commissioner Kennedy stated the developer was not required to go wider than 24 feet, back of curb to back of curb. It may be to their advantage to do that because of the drainage problems that need to be addressed.

Horace Brown stated this also has to meet subdivision requirements.

Commissioner Evans stated this was except where there was the transition from 32 feet to the narrow width.

Colleen Dowdall stated she checked the regulations and the 24 foot roadway is permitted in this subdivision because it is considered a rural subdivision. Rural subdivision roads also do not require curb and gutter. In order to put in curb and gutter, the additional width is needed, otherwise the driving lane would be too narrow.

Commissioner Kennedy suggested changing the condition so it is clearly understood.

Steve Hall stated that it was assumed that when this subdivision is hooked up to City sewer it will be annexed. Is City standard 24 foot wide plus curb and gutter?

Nancy Heil stated she did not have her City regulations with her but she believed it was 28 feet wide, back of curb to back of curb, which is consistent with this proposal. She suggested rewording Condition 2 to say either "the road shall have a 28 foot roadway, back of curb to back of curb" or "have a 24 foot paved roadway width" and strike back of curb to back of curb.

Commissioner Evans asked if it could say "28 foot paved roadway width or meets City specifications."

Colleen Dowdall stated the City has already commented on this proposal. The sewer contract, which has been approved, may be where the road width is addressed. She did not want to leave the condition that open ended.

The Commissioners agreed to leave the roadway width at 24 feet and strike the "back of curb to back of curb" part.

Commissioner Evans stated she had a problem with no parking on the street. Where were visitors supposed to park?

Steve Hall stated this issue came up during Planning Board. There was an objection with the street going from 32 feet to 24 feet. It was offered to not allow on street parking. He suggested having parking on one side of the street only.

Commissioner Evans stated that made sense to her.

Jennie Dixon stated her understanding was that two 12 foot lanes was not sufficient for on street parking.

Horace Brown stated that was correct. If there are two 12 foot lanes with parking on one side it would be a one-way street.

Jennie Dixon stated if parking was to be allowed, the developers would need to have a little bit wider road width.

Commissioner Evans stated her comment was borne of frustration. She felt the parking or no parking issue was not being addressed consistently.

Nancy Heil explained that the 24 foot road width requirement was based on the density of the subdivision. Invermere, to the south, is more dense and the standard required there is 32 feet.

Chairman Carey stated that not allowing parking on the street seemed quite improbable and impractical.

Horace Brown stated on street parking is not allowed in the City in most cases.

Bob Wimett, the other developer of the project, stated it was their intention to not allow resident parking on the street. It did not look good. The only on street parking would be special situations with visitors.

Commissioner Evans stated she still had a problem with the parking situation.

Commissioner Kennedy stated that the road width was appropriate for this size subdivision, especially given the drainage problems. He felt there would be parking on the street by visitors and did not feel it would be a big problem.

Commissioner Evans did not like the condition stating that there will be no on street parking.

Commissioner Kennedy suggested removing that stipulation from the condition.

Commissioner Evans stated that would be acceptable.

Nancy Heil stated that Condition 2 would be revised to remove "There shall be no on-street parking on either side of the road."

Commissioner Evans agreed with the revision.

Commissioner Kennedy stated that removing the no parking statement referred to non-residents only as the developers were planning to ban on street parking for owners.

Commissioner Evans moved that the Board of County Commissioners deny the variance request from Article 3-8 of the Missoula County Subdivision Regulations for parkland dedication or payment of cash in lieu of parkland, based on the findings of fact set forth in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve Mountain Heights Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report, with the amendments to Conditions 2, 7, 15 and 18 as recommended by the Planning Board and the amendments to Condition 2 as recommended today. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans stated that the conditions refer to St. Augustine Drive and wondered if that should be changed to Marias Street.

Nancy Heil stated that to avoid confusion, throughout the entire packet the street is referred to as St. Augustine Drive. Condition 1 stated the name shall be changed to Marias Street.

Mountain Heights Subdivision Conditions of Approval:

Roads and Transportation

1. The subdivider shall change the name of the street proposed to serve this subdivision from St. Augustine Drive to Marias Street, subject to review and approval by the County Surveyor, prior to final plat approval. *Subdivision Regulations Article 3-2(8) and County Surveyor recommendation.*
2. The subdivider shall construct the St. Augustine road section within this subdivision to the southern edge of the property to connect with and complement the Marias Street road section within the Invermere subdivision. The road shall have a 24 foot paved roadway width, curbs, gutters and 5 foot boulevard sidewalk separated from the back of curb by 7 feet on both sides of the street. Appropriate signage shall be placed at the northerly end of the road where it intersects St. Francis Drive, subject to review and approval by the County Surveyor, prior to final plat approval. *Subdivision Regulations Article 3-2(10).*
3. The subdivider shall install boulevard street trees every 30 feet on center along the street section within this subdivision. Street trees shall be a minimum of 8 feet tall and shall have a 2 inch caliper diameter. Plans for street tree installation shall be approved by OPG prior to final plat approval. *Compliance with 1997 Miller Creek Comprehensive Plan Amendment and OPG recommendation.*
4. The following statement shall appear on the face of the final plat:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for future improvements to Marias Street and St. Francis Drive, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land." *Subdivision Regulations Article 3-2, City Engineer and OPG recommendation.*
5. The subdivider shall place a one-foot no-access strip along the north boundary of Lot 7, to prevent access to the property from St. Francis Drive, subject to approval by the County Surveyor prior to final plat approval. *Subdivision Regulations Article 3-2 and County Surveyor recommendation.*
6. The subdivider shall mitigate the traffic impacts generated by this subdivision on the Miller Creek transportation system in the amount of \$1,800.00 per lot to be paid to Missoula County, prior to final plat approval. *Subdivision Regulations Article 4-12, County Surveyor and OPG recommendation.*
7. The subdivider shall file with the County Clerk and Recorder an agreement for maintenance of the landscaped islands located at the southerly and northerly ends of the St. Augustine street section, subject to approval by the County Surveyor and County Attorney, prior to final plat approval. The covenants shall be amended to clearly designate who within the subdivision is responsible for maintaining the islands, subject to County Attorney's Office approval prior to final plat approval. *County Surveyor recommendation.*

Air Quality

1. The applicant shall develop a dust abatement plan and provide dust abatement for all roads adjacent to and within the Mountain Heights

subdivision during and through construction and paving of the roads. The dust abatement plan shall be approved by the Health Department prior to approval of the final plat. *Subdivision Regulations Article 3-1(1)(D) and Health Department recommendation.*

9. A plan for mitigation of post-development road dust emissions resulting from additional hillside road sanding shall be reviewed and approved by the Air Quality Division of the City-County Health Department prior to approval of the final plat. *Subdivision Regulations Article 3-1(1)(D) and Health Department recommendation.*

Drainage

10. Grading, drainage and erosion control plans, including on-site drainage retention for Areas 1 and 4, and calculations for a 5-year return frequency storm, shall be reviewed by the City Engineer and approved by the County Surveyor prior to approval of the final plat. The erosion control plan shall address all areas that may experience erosion due to cut and fill, road, driveway and utility improvements, and home construction. The plan shall specify a strategy and timeline for implementation for these areas before, during and after site grading and construction. *Subdivision Regulations Article 3-4 and OPG recommendation.*
11. The final plat shall include a certification by the consulting engineer that the drainage design will effectively retain any additional drainage that results from the subdivision on site or release it in a manner that will not substantially increase the peak run-off normally present before the subdivision. *Subdivision Regulations 3-4 and OPG recommendation.*
12. The following statement shall appear on the face of the final plat:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for installation of a regional storm drainage system, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land." *Subdivision Regulations Article 3-2, City Engineer and OPG recommendation*

Sewer

13. Sewer plans, including location of sewer easements, for the subdivision shall be approved by the City Engineer prior to approval of the final plat. *Subdivision Regulations Articles 3-6 and 3-7 and City Engineer recommendation.*

Weeds

14. A Revegetation Plan for disturbed sites shall be approved by the Missoula County Weed Board prior to approval of the final plat. The developer shall file a development agreement stating that weeds will be controlled on unsold lots. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*

Fire Services

15. Plans for a temporary turnaround or secondary emergency access at the southerly end of the proposed street shall be reviewed and approved by the Missoula Rural Fire District and County Surveyor prior to final plat approval, unless a through-access to Marias Street has been put in place. *Subdivision Regulations Article 3-7(1) and Missoula Rural Fire District recommendation.*

Parkland

16. A. The subdivider shall pay cash in lieu of parkland dedication in an amount to be determined by the County Assessor's Office. *Subdivision Regulations Article 3-8 and Parks and Recreation Department recommendation.*
- B. The following statement shall appear on the face of the final plat:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for park maintenance, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land." *Subdivision Regulations Article 3-8, Parks and Recreation Department and OPG recommendation.*

Covenants

17. The Covenants shall be amended to include the following standards to reduce conflicts with wildlife:

- A. Compost piles shall be enclosed in a container. Gardens and compost piles shall be adequately fenced one foot below the surface and eight feet high with a top rail made of something other than wire to prevent wildlife entanglement.
 - B. Permanent barbecue pits shall be prohibited. Portable barbecues shall be cleaned regularly and stored indoors when not in use to prevent wildlife attraction.
 - C. Flowers, ornamental shrubs and fruit trees may be susceptible to damage from wildlife; therefore, planting of native vegetation is encouraged.
 - D. Garbage shall be stored in wildlife-proof containers with sufficiently tight-fitting covers to prevent the escape of noxious odors and to prevent the entrance and destruction by wildlife.
 - E. Domestic pets (dogs, cats, etc.) shall be kept in a contained area to avoid wild animal harassment. Pet and livestock food shall be stored in a secured area, not accessible to wildlife.
 - F. Livestock shall be protected and enclosed with adequate fencing or sturdy cages to protect them from wildlife.
 - G. Salt blocks and food for deer and other wildlife shall be strongly discouraged.
 - H. The brochure "Living with Wildlife" shall be distributed to all lot owners. *Subdivision Regulations Article 3-1(1)(C), 1997 Miller Creek Area Comprehensive Plan compliance and Montana Department of Fish, Wildlife and Parks recommendation.*
18. The covenants shall be amended to require the paving of the entire length of all driveways. The covenants shall be revised as required by the conditions of subdivision approval, and the covenants related to these revisions shall not be amended or deleted without governing body approval. The revised covenants shall be reviewed and approved by the Missoula County Attorney's Office and OPG staff prior to approval of the final plat. *Subdivision Regulations Article 5-1(5)(I).*

Hearing: Rock Creek Airpark – POSTPONED UNTIL APRIL 19, 2000

As announced at the beginning of the Public Meeting, the continuation of the hearing on Rock Creek Airpark has been postponed to Wednesday, April 19, 2000.

There being no further business to come before the Board, the Commissioners were in recess at 2:25 p.m.

Resolution No. 2000-028 and Commitment Agreements

Following the public meeting, Commissioner Carey signed Resolution No. 2000-028, authorizing the entering into, execution and delivery of a Commitment Agreement with the Department of Natural Resources and Conservation regarding the sale and delivery of the County's \$233,000 limited obligation bond for the Western Montana Fairgrounds Water Project. The Commitment Agreements for the Montana Drinking Water State Revolving Fund were also signed and establishes the following:

1. The amount of funds the Missoula County-Western Montana Fairgrounds wishes to borrow for the construction portion of this project;
2. The approximate date at which the loan will be closed;
3. A description of the project and an estimated construction schedule;
4. An estimate of loan terms; and
5. A summary of certain provisions of the loan.

THURSDAY, APRIL 6, 2000

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was out of the office April 6th and 7th.

Monthly Report -- Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen Orzech, for the month ending March 31, 2000.

ADMINISTRATIVE MEETING

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

Professional Services Contract – The Commissioners signed a Professional Services Contract between the Historical Museum at Fort Missoula and Gregg Porter, independent contractor, for grounds maintenance and mowing of the main Museum lawn. The amount shall not exceed \$7,000.00. The term will be April 15, 2000 through October 15, 2000.

Letter – Chairman Carey approved and signed a Letter to David Boergers, Secretary (Federal Energy Regulatory Commission) requesting a public meeting in Missoula regarding the Application for License Amendment - Milltown Dam.



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

Rebecca J. and Jonathon D. Meek II in the amount of \$5,000.00, for the property located at 8617 Mullan Road, Missoula, Montana 59808.

The documents were returned to Jennifer Blumberg in the Office of Planning and Grants for further handling.

Subdivision Improvements Agreement and Guarantee – The Commissioners signed a Subdivision Improvements Agreement and Guarantee with Robert E. Kelly and Duane Pettersen for Lolo Greens Subdivision reducing the amount of their guarantee to only include the remaining road and walkway improvements, with the required water improvements already complete. The improvements which remain to be completed are:

1. Construction of Golf Drive, a 20-foot wide paved road to serve three of the lots within said subdivision.
2. Construction of a 5-foot wide paved pedestrian walkway along Golf Drive and along Lakeside drive.
3. Restoration of the pavement of Lakeside Drive where water and sewer services have been installed.

The total estimated amount shall be \$25,131.70. The completion date will be February 8, 2001.

Grant Documents – Chairman Carey signed an Application for Federal Assistance, Certification Page and Disclosure of Lobbying Activities in order to obtain a grant for the continuation of the Flagship Project at Rattlesnake Middle School and Hellgate High School. This is the third year of the grant. The County will receive \$70,493.00, the majority of which will be disbursed to local agencies to continue Flagship Project and activities of the Missoula Forum for Youth and Children. The Office of Planning and Grants will use \$5,000.00 to administer the grant. The document was returned to Peggy Seel for further handling.

Other items included:

- 1) The Commissioners approved a Request from the Human Resource Council for a grant in the amount of \$10,000.00 from the CDBG Program Income Account to support the efforts of the Human Resource Council's housing rehab program and the NeighborWorks Network; and
- 2) The Commissioners approved a Request from Montana Community Development Corporation for a loan of \$90,000.00 and a grant of \$12,500.00 to match US Bank matching funds of \$102,500.00 to create a revolving loan fund for Missoula Northside and Westside Neighborhoods. The loan would be a two percent interest-only loan, with a term of 10 years, renewable. The source of funding is the County's Program Income Account.

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

FRIDAY, APRIL 7, 2000

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

Claims List -- Commissioners Carey and Kennedy signed the Claims List, dated April 7, 2000, batch number 586, with a grand total of \$770.00. The Claims List was returned to the Accounting Department.


Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chairman
Board of County Commissioners

MONDAY, APRIL 10, 2000

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was out of the office the week of April 10th through the 14th recovering from surgery.

Modification of Agreement – Chairman Carey signed Modification No. 4 of Agreement No. 290040 between the Missoula County Water and Sewer District and the Montana Department of Environmental Quality to modify the terms of the Agreement between them concerning preparation of a facility plan necessary to apply for a federal grant to construct wastewater treatment works for the El Mar Estates area in Missoula, Montana, amending the Agreement as follows:

1. Section 1(A) (3) is amended to read: By June 5, 2000, submit to DEQ for approval a final facility plan...
2. Section II is amended to read: Performance of the agreement shall begin on the date signed by both parties and time of essence, the services required by Section 1A must be completed by June 5, 2000...

The document was forwarded to the Department of Environmental Quality in Helena.



Modification of Agreement – Chairman Carey signed Modification No. 4 of Agreement No. 290039 between Missoula County and the Montana Department of Environmental Quality to modify the terms of the Agreement between them concerning preparation of a facility plan necessary to apply for a federal grant to construct wastewater treatment works for the Golden West Area of Missoula County, amending the Agreement to extend the date to June 5, 2000 for submission of a final facility plan and the completion of services required by Section 1A.

The document was forwarded to DEQ in Helena.

Amendment – The Commissioners approved the request to amend Conditions of Approval #3 and #9 for Bean Addition Second Summary Subdivision located in Huson as follows:

1. #3 will read: A road sign for Calamity Lane shall be placed at its intersection with View Crest Drive prior to plat filing. Calamity Lane shall be improved to a 24-foot width to the point of access for Lots 5A and 5B. Engineering and drainage must be approved by the County Surveyor's Office prior to plat filing. The design for the turnaround at Lot 4A's driveway shall be approved by the County Surveyor's Office and Frenchtown Rural Fire District prior to plat filing.
2. #9 will read: The entire length of Bagnell Lane shall be widened and paved to the width of 24 feet. The developer shall pay for 2/7 of the cost of the improvements.

The request was approved at the Office of Planning and Grants meeting on April 10, 2000, as per the letter to John Kellogg, Professional Consultants, Incorporated.

Amendment – The Commissioners approved the request to amend Conditions of Approval #2 for Fairfax Estates Lot 2 second Summary Subdivision to reflect proposed revisions in the access design of the adjacent Bean Addition and a road improvement agreement between Ken Jackshaw and his neighbor, Robert Bean.

1. #2 will read: Bagnell Lane shall be improved to a 24-foot width. The turnaround shall be improved in a design to be approved by the County Surveyor's Office and Frenchtown Rural Fire District prior to plat filing. Engineering and drainage must be approved by the County Surveyor's Office prior to plat filing. A road sign shall be placed at the intersection of Bagnell Lane and the Frenchtown Frontage Road prior to plat filing. The paving will occur to the entrance to the subdivision.

The request was approved at the Office of Planning and Grants meeting on April 10, 2000, as per the letter to Ron Ewart, Eli & Associates.

TUESDAY, APRIL 11, 2000

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

ADMINISTRATIVE MEETING

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

Resolution – The Commissioners signed a joint Resolution of Missoula County (No. 2000-030) and Ravalli County (No. 1055) designating the regional bicentennial commission of Missoula and Ravalli County headed up by the Missoula area Chamber of Commerce and the Bitterroot Valley Chamber of Commerce as the official organization to promote and support the celebration of the 200th anniversary of the Lewis and Clark expedition and the expedition passage through this region.

Amendment – The Commissioners signed Amendment 1 to DIR-00-001-0-MCDF, amending the contract entered into September 20, 1999 with the State of Montana Department of Corrections for reimbursement to the County for sex offender treatment to inmates in the Facility. The total amount will not exceed \$66,000.00 for sex offender programming costs November 1, 1999 through June 30, 2000. The Department shall pay the County an amount not to exceed \$98,000.00 for sex offender programming during FY00. The term shall be upon signature of the parties through June 30, 2001.

Construction Agreement – Chairman Carey signed a Construction Agreement between Montana Power Company and the Missoula County Airport Industrial District to install, operate and maintain electric and gas service to Lots 10, 11, 1, 1A and 1B, Block 4, Missoula Development Park, Phase 1. The total cost will be \$13,837.00. The document was returned to Barbara Martens in the Project's Office for further handling.

Budget Transfers – The Commissioners signed two Budget Transfers for the Health Department:

1. Control Number 00-014, from FS Planning Reviews AIDS HIV Prevention to FS Planning Review AIDS Prevention 2000-01 in order to add FS to the account name to differentiate between the two AIDS contracts for easier tracking. The total amount transferred was \$37,046.00.
2. Control Number 00-015, from HIV Prevention FY99-2000 to HIV Prevention 2000-2001 to separate two HIV Prevention contracts for accounting and auditing ease. The total amount transferred was \$34,446.00.

Resolution No. 2000-029

The Board of County Commissioners signed Resolution No. 2000-029, a Budget Amendment for FY'2000 for the Health Department, increasing the Adopted Budget by \$12,000 due to pass through funds from DPHHS for a contract with Healthy Mothers, Healthy Babies covering the period from July 1, 1999 to December 31, 2001.

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

WEDNESDAY, APRIL 12, 2000

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The Board of County Commissioners did not meet in regular session. Commissioner Carey participated in the Department of Health and Human Services Early Childhood and Future Search Conference held at Grouse Mountain Lodge in Whitefish from April 12th through the 14th.

Claims List -- Commissioners Carey and Kennedy signed the Claims List, dated April 11, 2000, batch numbers 583, 584, 587 and 589, with a grand total of \$108,809.61. The Claims List was returned to the Accounting Department.

Monthly Report -- Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for the report of the Sheriff, Douglas Chase, for the month ending March 31, 2000.

The Weekly Public Meeting scheduled for this date was cancelled

THURSDAY, APRIL 13, 2000

The Board of County Commissioners did not meet in regular session. In the morning, Commissioner Kennedy spoke at the Child and Family Resource Council's "Breakfast for Kids" held at the Senior Citizen Center.

Claims List -- Commissioners Evans and Kennedy signed the Claims List, batch numbers 594 and 596, with a grand total of \$169,236.04. The Claims List was returned to the Accounting Department.

Plat -- The Commissioners signed the Plat for Gooden Acres, a three-lot subdivision located in the NW1/4 of Section 20, T 15 N, R 22 W, PMM, Missoula County, a net area of 18.24 acres with the owners of record being Wade D. and Heather J. Gooden.

Counter Offer -- Acting Chair Kennedy signed the Counter Offer from Ibey Sprinklers and Landscape for Lot 1A, Block 4, Missoula Development Park as follows:

1. Sales price to be \$145,734.00.
2. Seller to credit buyer \$12,441.00 after performance of park development/maintenance agreement for Park 12 area...
3. Buyer acknowledges additional easement for utilities not to exceed 10' in width will be dedicated and recorded prior to closing on easterly boundary (between 1A and 1B).

The document was returned to Barbara Martens of the Projects Office for further handling.

FRIDAY, APRIL 14, 2000

The Board of County Commissioners did not meet in regular session.

Election Canvass -- In the forenoon, Commissioner Kennedy, County Surveyor Horace Brown and County Superintendent of Schools Rachel Vielleux canvassed the East Missoula Sewer District mail ballot election.


Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chairman
Board of County Commissioners

MONDAY, APRIL 17, 2000

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was out of the office the week of April 17th through the 21st recovering from surgery.

Claims List -- Commissioners Carey and Kennedy signed the Claims List, dated April 13, 2000, batch numbers 588 and 597, with a grand total of \$137,555.78. The Claims List was returned to the Accounting Department.

Claims List -- Commissioners Carey and Kennedy signed the Claims List, dated April 14, 2000, batch number 593, with a grand total of \$52,806.72. The Claims List was returned to the Accounting Department.

Claims List -- Commissioners Carey and Kennedy signed the Claims List, dated April 17, 2000, batch numbers 599 and 602, with a grand total of \$66,763.84. The Claims List was returned to the Accounting Department.

Claims List -- Commissioners Carey and Kennedy signed the Claims List, dated April 17, 2000, batch number 601, with a grand total of \$18,722.00. The Claims List was returned to the Accounting Department.

Resolution -- The Commissioners signed Resolution No. 2000-031 to abandon a portion of Lodge Way from the northeast boundary of Arrowhead Subdivision Phase I, to the end of said Lodge Way at its intersection with the former location (now vacated) of Double Arrow Road located in Section 11, T 16 N, R 15 W, PMM, Missoula, County, Montana (Double Arrow Ranch).

Resolution -- The Commissioners signed Resolution No. 2000-032 to abandon a portion of the old County Road/Highway right-of-way from the southwest boundary of Book 373 Micro, Page 1929 to the southeast right-of-way of Double Arrow Road, located in the NW ¼ of Section 14, T 16 N, R 15 W, PMM, Missoula County, Montana.

TUESDAY, APRIL 18, 2000

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

Claims List -- Commissioners Carey and Kennedy signed the Claims List, dated April 18, 2000, batch numbers 598, 600 and 603, with a grand total of \$86,994.82. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Letter -- The Commissioners signed a Letter to the Missoula County Conservation District notifying them that an election would not be held for the supervisory position. The document was returned to Kim Cox in Elections for further handling.

Resolution -- The Commissioners signed Resolution No. 2000-033 designating the Missoula County Environmental Certifying Officer for all projects for which HUD funds are received as required by the U.S. Department of Housing and Urban Development.

Shoreline Permit -- The Commissioners approved a request from Gay Brewer for a permit to replace an existing bridge at the mouth of Lake Inez, as per the conditions set forth. The property is in the SW ¼, Section 31, T 18 N, R 15 W. Chairman Carey signed the permit, which was returned to Brian Maiorano in OPG for further handling.

Other items included:

The Commissioners approved the list of proposed members of the Missoula/Ravalli Regional Bicentennial Commission submitted by the Chamber, with the addition of four names submitted by the Commissioners.

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

WEDNESDAY, APRIL 19, 2000

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

PUBLIC MEETING - April 19, 2000

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

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$574,894.96. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Consideration: Starks Addition Summary Subdivision (2 lots) - Condon Area

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

Virginia Starks, represented by Professional Consultants, Incorporated, has requested to create Starks Addition, a 2-lot summary subdivision in the Condon area. This proposal would split an 80 acre parcel into 2 lots, approximately 40 acres each. The property is primarily rolling forest land with two riparian areas at the north and south ends of the property.

Staff recommends approval of the five variances required and approval of the summary subdivision, subject to 7 conditions outlined in the staff report.

The key issues for the subdivision are Comprehensive Plan compliance, roads and access and natural environment/wildlife considerations. The property is unzoned and the 1996 Swan Valley-Condon Comprehensive Plan Amendment designates the parcel as open and resource land with a recommended residential density of one dwelling unit per 40 acres. A portion of the property, mostly on Tract 2B on the south, is located within the Grizzly Linkage Zone. The plan also mentions that a maximum density of one dwelling unit per 40 acres is recommended for the Linkage Zone.

Properties in the area are generally large tract residential and large tract corporate or government owned forest land. Currently, the Starks residence and an old homestead, used by guests of the Starks, are located on Tract 2A, the northern lot. This proposal would likely add one new dwelling unit. With this proposal, the density would be one dwelling unit per 28 acres, which includes the old homestead used for guests. Staff found substantial compliance due to Conditions 6 and 7 which limit the buildable area on Tract 2B.

The property is accessed by taking Highway 83 north to Kauffman Road, east on Kauffman Road almost to its end, then Starks Lane to the south. Kauffman Road does not meet County road standards for width and the County Surveyor supports an RSID waiver for future improvements to this road. Starks Lane is a private road that also does not meet County road standards for width, right-of-way width, cul-de-sac length and the paving requirement for onsite roads in subdivisions. The applicant has requested variances for each of these issues and staff supports the variance requests. Starks Lane only serves three lots with the proposed subdivision, has a low traffic volume and has a number of possible turn around points. The local fire district had no adverse comments on the proposal. Staff does recommend a road maintenance agreement as a condition of approval.

Starks Lane also divides the Starks residence from the rest of Tract 2A and the applicant has requested a variance for this situation. Staff supports the variance request. From the old homestead on Tract 2A to the Stobie residence, Starks Lane functions as a driveway. Staff has recommended a driveway maintenance agreement be filed as a condition of approval.

Access is a critical issue because this property is located within a Wildland/Residential Interface. Staff recommends covenants for the property that include a section on development in Wildland/Residential Interface, including driveway design, fuel management, landscaping and building guidelines. The applicant has also requested a variance from the requirement for sidewalks in the subdivision. Staff supports this request.

The subdivision has a number of natural environment/wildlife issues. It is located in the foothills of the Swan Mountain Range and is an area of winter range for white tail deer and other large game. In addition, mountain lions, wolves, black bear and grizzly bear are in the area. Montana Fish, Wildlife and Parks have documented a number of sighting and encounters, particularly with grizzly bears, in the area. The 1992 Inventory of Conservation Resources has documented the area as approximate critical habitat for grizzly bears.

The property is located within the Grizzly Linkage Zone which was set up by the U.S. Department of Fish and Wildlife to provide corridors for the grizzly bear between the Swan and the Mission Mountain ranges. Chris Servheen of U.S. Fish and Wildlife, supports restricting development within the Grizzly Linkage Zone and staff recommends that any portions of the property within the zone be designated as no build zones. Permitted and prohibited activities in the no build zones should be clarified in the covenants. The covenants should also include information on "Living with Wildlife."

There are two riparian areas in the subdivision. One is located to the north where Starks Lane comes into the subdivision. This is primarily a high ground water area. The other is located on the southwest corner of the subdivision where Smith Creek flows through the property. The application does include a riparian management plan and staff recommends this be included as an attachment to the covenants. Staff also recommends that the buffer area on the north side of Smith Creek be extended to 150 feet.

Chairman Carey asked for public comments.

John Kellogg, Professional Consultants, Inc., developer's representative, was present, as was the applicant, Virginia Starks. He stated that Ms. Starks has lived on this property for many years and is fully aware of the wildlife concerns that have been discussed. She and her neighbors are well aware of the requirements of living with wildlife. The prospective buyers of this property have also lived in the area for many years and are familiar with the wildlife concerns. Ms. Starks is in agreement with the conditions. They did have a concern about the buffer on the creek which seemed excessive, but as explained it is acceptable.

Commissioner Kennedy stated he appreciated the no build zones offered on this subdivision. The recognition of the importance and protection of wildlife in this area was significant. He asked that when the house is sited, it be done as far north as possible in further recognition of the need to protect the

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wildlife zone. This was not a condition or demand, it was simply a request to the developer.

There were no further public comments.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision; approve the variance request from Section 3-2(1)(G) of the Missoula County Subdivision Regulations to allow an unpaved onsite road; approve the variance request from Section 3-2(3)(A) of the Missoula County Subdivision Regulations for the maximum length of a cul-de-sac road; approve the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to allow Starks Lane (cul-de-sac road) to vary from the required 54 foot right-of-way width and 24 foot road width to the existing right-of-way and road widths; and approve the variance request from Section 3-3(1)(D)(2) of the Missoula County Subdivision Regulations that states that no single lot shall be divided by an existing right-of-way; all based on the findings of fact set forth in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the Starks Addition Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Starks Addition Summary Subdivision Conditions of Approval:

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

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for improvements to Kauffman Road, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners." *Subdivision Regulations Article 3-2, OPG and County Surveyor recommendation.*

2. The road maintenance agreement shall be reviewed and approved by the County Attorney's Office prior to final plat approval. A driveway maintenance agreement shall be approved by the County Attorney's Office prior to final plat approval for the portion Starks Lane that extends from the driveway of the old homestead to the Stobie residence. *Subdivision Regulations Article 3-2(1)(H) and OPG recommendation.*
3. Grading and drainage plans shall be approved by the County Surveyor's Office prior to final plat approval. *Subdivision Regulations Article 3-4 and County Surveyor recommendation.*
4. The applicant shall provide written documentation that the Swan Valley Volunteer Fire Company approves driveway designs that provide year round emergency access to the property, prior to final plat approval. *Subdivision Regulations Article 3-2(6)(E), 3-7(2), 3-2(2)(G) and staff recommendation.*
5. The following statement shall appear on the face of the final plat and in all instruments of conveyance:

"Acceptance of a deed for a lot within this subdivision constitutes a waiver of the right to protest a future RSID/SID for public water system adequate for fire protection, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land." *Subdivision Regulations Article 3-7(2).*

6. The plat shall show the following as no-build zones on the plat: Areas with slopes greater than 25%; riparian resource areas; and portions of the property within the Grizzly Linkage Zone. The riparian resource buffer area along the north side of Smith Creek shall be increased to 150 feet, to be reviewed and approved by OPG prior to final plat approval. *Subdivision Regulations Article 3-1(2), 4-2(5)(D)(6), 4-1(12).*
7. The subdivider shall file development covenants that include, at least, the following elements, to be reviewed and approved by OPG and the County Attorney's office, and filed with the Missoula County Clerk and Recorder's Office prior to final plat approval:
 - a. Standards for development in Wildlife Residential Interface including driveway design, fuel management, recommended landscaping and roofing materials. *Subdivision Regulations Section 3-2(6), 3-1(1)(B) and OPG recommendation.*
 - b. Definition of permitted and prohibited activities in no-build zones. *Subdivision Regulations Section 3-1(2) and 3-13.*



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- c. The Riparian Resource Management Plan, amended to include defined prohibited and permitted uses and an attachment to the Plan that shows the Smith Creek boundaries of the riparian resource areas, and the buffer area increased to 150 feet from the north side of Smith Creek. The Plan shall be approved by OPG prior to final plat approval. *Subdivision Regulations Article 3-13 and OPG recommendation.*
- d. A section that addresses the purpose and location of the Grizzly Linkage Zone and property owners' responsibilities for living with wildlife, protection of vegetation from damage, confining pets and properly storing garbage and other attractants. The MFWP brochures "Living with Wildlife," "Living with Grizzlies," "Living with Mountain Lions" and "Managing Private Land in Swan Valley Linkage Zones for Grizzly Bears and Other Wildlife" by the Swan Valley Linkage Zone Working Group shall be distributed to all lot owners and recommendations followed. Lot owners shall be informed by a statement in the covenants that within a five-mile radius there have been numerous occurrences, sightings, and some significant problem encounters between people, black bears, grizzly bears, and mountain lions. *Subdivision Regulations Article 3-1(2) and 4-1(12), OPG, Montana Fish, Wildlife, and Parks and United States Fish and Wildlife recommendation.*
- e. The property owners shall comply with Missoula County Noxious Weed Management Act and the Missoula County Weed Management Plan. Covenants should also include a requirement for property owners to revegetate any areas disturbed by construction within an appropriate time period. *Subdivision Regulations Section 3-1(1)(B).*

Supplemental Hearing: Proposed Project for Dinny Stranahan Cancer Research Institute, Inc. (Amending issuance of revenue bonds to finance costs)

Chairman Carey opened the public hearing.

This is a request to approve a supplemental amending resolution increasing the dollar amount of the IDR bond issue previously approved by Resolution 99-030 in May, 1999.

The Dinny Stranahan Advanced Cancer Research Institute has requested that the Board increase the dollar amount of the Industrial Development Revenue bonds to be issued to finance construction and equipment for the center. The increase is requested because of an increase in the scope of the project. IDR bonds are secured solely by pledge of project revenues and do not give rise to any obligation on the part of the County.

Milt Datsopoulos, Datsopoulos, MacDonald & Lind, stated that in May and June, 1999, the Commission adopted resolutions for the development of Industrial Revenue Bonds not to exceed \$7,000,000 for the Dinny Stranahan Research Institute. Construction has begun on the facility and is well along toward completion. Completion is expected to be completed and operations underway by October of this year. During the course of construction it became evident that the Institute's mission would require more space. The facility was expanded to 24,900 square feet with a 16,200 square foot basement. Because of that, there have been substantial additional costs required. These additional costs have necessitated the request today to amend the original resolutions of approval for bonds not to exceed \$8,500,000. The bonds will be underwritten by the Bank of America Securities. The understandings reached last June with the Coalition for a Living Wage have been approved by the board but no other formal interaction has taken place since then. Staffing has not yet begun at the facility. A written Memorandum of Understanding with the Coalition has been drafted. It is anticipated that a community based Advisory Board will be formed. When the task of creating job descriptions begins, the Institute will welcome input from the Living Wage representatives. Dr. Stranahan has committed a large portion of her personal wealth to this project. Her commitment to the project will not slight any of the working people of the community.

Commissioner Evans asked approximately how many people would be employed at the Institute.

Milt Datsopoulos stated there would be in excess of 50 employees and the annual payroll would be in excess of \$2,500,000. Employment arrangements with some of the key, high level researchers have been made, but other staffing requirements have not been finalized.

Nina Kramer, a representative of the Missoula Coalition for Living Wage Jobs, stated they have met with the principals from the Institute and the Memorandum of Understanding mentioned by Mr. Datsopoulos does meet with their approval.

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

Commissioner Evans moved that the Board of County Commissioners approve the supplemental amending resolution which will increase the amount of revenue bonds from \$7,000,000 to not to exceed \$8,500,000, and authorize the Chair to execute the resolution and other required documents. Commissioner Kennedy seconded the motion.

Commissioner Kennedy stated that at the hearing last year, honorable people came to an honorable conclusion regarding all the issues involved. He appreciated all the work done by the parties involved and felt this would be an asset to the community.

Milt Datsopoulos stated that Michael Sehestedt has been an incredible resource during this process. He has been extraordinarily skillful in helping pursue these bonds. He sincerely appreciated all Michael Sehestedt's efforts.

The motion carried on a vote of 3-0.

Continuation of Hearing: Rock Creek Airpark (11 lots) – 22 miles east of Missoula (Continued from January 26, 2000)

Chairman Carey continued the public hearing, which was opened January 26, 2000.

Jennie Dixon, Office of Planning and Grants, stated that as Chairman Carey mentioned, this hearing was continued from January 26, 2000. It was delayed until April 5, 2000, and at that time, notified and delayed again until today. The original proposal had one large Lot 1 and Lots 2-11 were fairly evenly spaced. The delay to April 5, 2000 involved some issues regarding floodplain and storage of hazardous materials in association with an airstrip. During the interim, the applicant and OPG worked to resolve some of those issues which required additional time and resulted in the request to delay until today. Two day ago, the applicant provided a revised plat which shows Lot 1 remaining the same size, Lots 2-10 being reduced in size to approximately .44 acres each and Lot 11 being enlarged. Staff would ask at this point that the Commissioners conduct the public hearing today. Staff has not had time to look at the proposed amendment to the plat and draft amended conditions. The initial impression is that there does not appear to be any problems with the amended plat but staff would like time to draft new findings of fact and conclusions of law and amended conditions for the Commissioners consideration. She asked that the hearing be continued for two weeks. The subdivider is in agreement with the delay and has asked for it as well.

Ron Ewart, Eli and Associates, stated they appreciated the opportunity to mitigate the issues identified. Some of those issues are valid, especially the floodplain issue. The FEMA maps have always been used but over the past few years, it has become apparent that more in depth research is needed to determine floodplain locations. The most important issue to mitigate was potential flooding on the property. The mitigation of that issue was to not allow septic on the property. The applicant was reluctant to make that change, but did make the concession. He has also presented a letter to OPG and the Commissioners that address some of the other items requiring mitigation. There would be no storage of hazardous materials on the property. Peter Nielsen had no concerns because of the amount of materials that might be on hand, similar to what would be in a garage. The ideas and concepts presented during recent discussions are acceptable but they would withhold approval until the final conditions are drafted. They are in agreement with the delay for an additional two weeks. The latest plan proposes to reduce the hanger lots from 160 feet to 80 feet wide. As homes will no longer be included in the plan, 80 feet is enough room for just an aircraft hanger. The maximum size for a small aircraft hanger is approximately 40 feet by 40 feet. A vegetative landscape buffer and two trees would be required per lot. An 80 foot lot would provide ample space for a 40 foot by 40 foot hanger. Gary Lundberg was present and could answer questions if the Commissioners had any.

Commissioner Evans asked if this subdivision fell within the corridor landscaping requirements?

Jennie Dixon stated she did not believe it did but would check to make sure.

Commissioner Evans stated she did not like to make the Commissioners party to covenants, but in this case, she thought it might be a good idea for the County to be a party to the covenants. Michael Sehestedt had an alternate idea as well.

Michael Sehestedt stated that because the concern was seeing that the covenants are, in fact, enforced on this subdivision, the covenants could provide that it is a contract between the property owners and that the County is intended to be a third party beneficiary with the right to enforce the covenants. This is a half-way measure that addresses Commissioner Evans concerns. This method would give the County the ability to enforce the covenants but does not entangle it in a homeowners association.

Jennie Dixon stated that there are several conditions of approval that recommend changes to covenants, but none of them that entangle the County in enforcing them. Staff has not recommended that.

Commissioner Evans stated she appreciated staff not involving the County, but in this particular case, she would like the ability to enforce the covenants without the entanglement.

Jennie Dixon stated that typically the requirement is that portions of the covenants cannot be amended without the consent of the governing body.

Michael Sehestedt stated that requirement keeps the covenants from being amended and is an important obligation. His method would be additional and would indicate that the contract is intended to benefit a third party. By expressing declaring Missoula County as a third party, they become an intended beneficiary with the power to enforce the covenants.

Commissioner Evans explained that this type of subdivision is very new and covers new ground. The other residents in the area are justifiably concerned that these changes will be serious. She wanted to make sure that the residents know the County agrees with what is being done and has the power to enforce what Mr. Lundberg is offering. It is not intended as an insult.

Ron Ewart stated he believed this was consistent with subdivision regulations.

Michael Sehestedt stated some of the details can be worked out over the next two weeks.

Kat Martin stated she is the closest neighbor to this proposal. With 14 hangers and possibly 14 planes, who would control the aircraft and keep them from running into each other.

Ron Ewart stated this is a small airstrip. There is radio communication between pilots. Planes would not be taking off during inclement weather or at night, except in emergencies. This is a recreational airstrip and air traffic will be minimal. Pilots would be in communication with each other and would use common sense and good judgement. Seeley Lake Airport is much larger and handles more airplanes and does not have a tower.

Michael Sehestedt stated that air traffic is controlled by the FAA and its regulations and, to some degree, the State Aeronautics Board. Small, non-commercial airports typically rely on care and prudence of pilots. The only mid-air collision in the valley in the last 50 years occurred in the controlled airspace of the Missoula County Airport.

Jennie Dixon stated she would like to meet with Mr. Ewart and Mr. Lundberg to look at the proposed amendments to the plat. One question that has occurred to her was the size of Lot 11. Staff will look at other issues as well, including floodplain and hazardous materials. Staff will bring the proposal to Planning Status by May 1, 2000 and to the Board for action on May 3, 2000. The subdivider has agreed to grant an extension to May 3, 2000.

Chairman Carey stated the hearing on Rock Creek Airpark would be continued to May 3, 2000.

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

Resolution – Following the Public Meeting, Chairman Carey signed Resolution No. 2000-034 to supplement and amend Resolution No. 99-030 approved May 13, 1999 relating to the proposed issuance of variable rate economic development revenue bonds (The Dinny Stranahan Institute) to increase the aggregate principal amount of such bonds to an amount not to exceed \$8,500,000.00 to provide funds to be loaned to The Dinny Stranahan Institute; granting and reaffirming preliminary approval thereto; and reaffirming and establishing continues compliance with the bond reimbursement regulations of the Internal Revenue Code.

Resolution – Following the Public Meeting, Chairman Carey signed Resolution No. 2000-035 supplementing and amending resolution No. 99-043 approved June 16, 1999 relating to a project on behalf of the Dinny Stranahan Research Institute and the issuance of economic development revenue bonds to finance the cost thereof pursuant to Montana Code annotated, Title 90, Chapter 5, Part 1, as amended; approving the project, as supplemented and amended by the supplemental application; and authorizing the issuance of bonds therefor.

THURSDAY, APRIL 20, 2000

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

Claims List -- Commissioners Carey and Kennedy signed the Claims List, dated April 20, 2000, batch numbers 582, 604, 605, 606 and 607, with a grand total of \$205,340.25. The Claims List was returned to the Accounting Department.

Plat – The Commissioners signed the Plat for Avery Acres, a minor subdivision located in the NW1/4 of Section 30, T 12 N, R 19 W, PMM, Missoula County, a total net area of 35.51 acres, with the owners of record being Darius J. and Janet L. Palen.

Plat and Improvement Agreement – The Commissioners signed the Plat and Improvement Agreement for Fairfax Estates Lot 2, a minor subdivision located in the NE ¼ of Section 26, T 15 N, R 22 W, PMM, Missoula County, a total gross and net area of 4.02 acres, with the owner of record being Lee Jackshaw. The Improvements to be completed are as follows: Bagnell Lane shall be paved to 24 feet from the frontage road along the entire length of the subdivision and per the estimate from Jensen Paving, the pavement and mobilization costs are estimated to be \$10,2000. Performance has been guaranteed by a Letter of Credit from Bitterroot Valley Bank dba Two Rivers Bank in favor of Missoula County. The deadline will be April 3, 2001 for the improvements.

ADMINISTRATIVE MEETING

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

Agreement – Chairman Carey signed an Agreement between the Forest Service and the Sheriff's Department for patrol by deputies on Forest Service lands for Memorial Day, Fourth of July and Labor Day to be reimbursed by the Forest Service (annual update), not to exceed \$29,598.24. Patrols for the month of October and November 1999 are dependent on funds becoming available, increasing the operating plan by \$2,182.40. The Plan is for the period beginning April 16, 2000, and ends September 30, 2000, and becomes a part of the Cooperative Agreement dated April of 1993. The document was returned to Dave Ball in Sheriff's Office for further handling.

Amendment – The Commissioners signed an Amendment to the existing Agreement with the Montana Department of Transportation to fund Phase II Year I of the Missoula Transportation Demand Management Program. The project completion date is extended from April 2, 2000 to July 31, 2000, to allow for completion of remaining project activities, and the funding is reallocated in the total amount of \$21,500.



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Acceptance of Grant Awards – Chairman Carey signed an Acceptance of two Board of Crime Control Grant Awards: Misdemeanor Supervision Program, July 1, 2000 through June 30, 2001, for the amount of \$42,626.00; and Pretrial Supervision Program, July 1, 2000 through June 30, 2001, for the amount of \$60,945.00. The documents were returned to Sue Wilkins at Missoula Correctional Services for further handling.

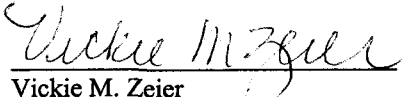
Revised Agreement – Chairman Carey signed a Revised Agreement with HDR Engineering, Incorporated for engineering services associated with the Missoula County Lolo RSID 901 Wastewater Facilities Priority Improvements, as per the items set forth. The Commissioners authorized only Tasks 1 and 2 at the present time. The document was forwarded HDR Engineering, Incorporated for signature.

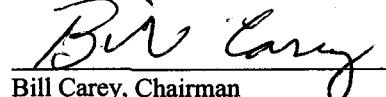
Counter Offer with Addendum – The Commissioners approved a Counter Offer proposed by the Offer Review Committee of the Missoula Development Authority for Lot 1A, Block 4, Missoula Development Park (Ibey Sprinklers and Landscape). The Addendum states that the buyer acknowledges requirements for connecting to Mountain Water system for drinking water and buyer agrees to meet state and local regulations for any wells drilled on subject property. The document was returned to Barbara Martens in the Projects Office for further handling.

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

FRIDAY, APRIL 21, 2000

The Board of County Commissioners did not meet in regular session. Commissioner Kennedy was out of the office all day; and Commissioner Carey attended a Mental Health Board Meeting in Hamilton during the day.


Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chairman
Board of County Commissioners

MONDAY, APRIL 24, 2000

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

Indemnity Bond -- Chair Carey examined, approved, and ordered filed an Indemnity Bond naming Ross Systems, Incorporated as principal for Warrant #361606 issued March 21, 2000 on the Missoula County General Fund in the amount of \$1,199.00 now unable to be found.

TUESDAY, APRIL 25, 2000

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

ADMINISTRATIVE MEETING

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

Agreement – The Commissioners signed an Agreement between the Missoula County Youth Detention Center and Missoula County Public Schools to provide an educational program for detained youth. The amount will not exceed \$60,00.00 for incurred operational costs (paid by the County). The term will be November 15, 1999 through June 30, 2000. The document was returned to Mike McMeekin at Detention Center for further handling.

Agreement – The Commissioners signed an Agreement for Professional Engineering Services with Territorial Engineering and Surveying, Incorporated in connection with RSID #8469, Street Improvements (paving) for Snowdrift Lane, Missoula, Montana. The total amount will be \$25,000.00.

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with Garden City Harvest to finalize the covenants and promises pertaining to the Grant of \$5,000.00 approved by the County for Garden City Harvest in exchange for providing 15,000 pounds of produce for the Missoula Food Bank. The County will be reimbursed in three payments from Garden City Harvest of \$1666.00 on August 1, September 1 and October 1, 2000. The term will be April 24, 2000 through October 1, 2000.

Abatement Form – The Commissioners approved and Chairman Carey signed an Abatement Form to authorize deletion of taxes for 1994 for Taxbill 94-005649, SUID 584907. The document was returned to the Treasurer's Office for further handling.

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

WEDNESDAY, APRIL 26, 2000

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



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Contract – Chairman Carey signed the Contract for Western States Abatement, Incorporated to remove the asbestos containing floor tile at the LaLonde Ranch, located at 5150 Highway 10 West, Missoula Development Park, Phase 2. The work will begin May 1, 2000 for a total cost of \$4,200.00. The document was returned to Barbara Martens in the Project's Office for further handling.

Proclamation – The Commissioners signed a Proclamation designating May 16, 2000 to be University of Montana Retirees' Day.

PUBLIC MEETING - April 26, 2000

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

Chairman Carey announced that the Commissioners would move the hearing on the request to vacate the Clearwater Shortline Railroad Right-of-Way to the last item on the agenda to allow sufficient time for all parties to be heard. The other agenda items would be short.

Public Comment

Jean Curtiss read from a prepared statement: "For the record, my name is Jean Curtiss. Last Monday, I attended the Budget Kick-off meeting where all the County department heads were informed that Missoula County has a significant cash deficit. Therefore, I was definitely surprised to learn that on Thursday and Friday of this week, the Commissioners and others would be interviewing for a newly created Public Works Director. While I understand the reasons for restructuring and creating a Public Works Department, I believe this is not the time to hire a director. Last week, all departments were told to develop 2 budgets, one with an 8% cut and one with a 15% cut. Most department heads indicated that would mean personnel cuts and cuts in core services. The morale in the County employees is at an all time low right now. To even consider hiring now, when we are talking possible layoffs in the Sheriff's department, Elections and other departments, is inappropriate and irresponsible. My point today is, you, as Commissioners, have known that the County budget was in trouble since before the first of the year and before this job was advertised. How can you, in good conscience, even consider adding personnel when you have asked all departments for budget cuts? The salary the Public Works Director would be paid could pay the salary of a couple deputy sheriffs, for example. It is time for you to model what you are asking others in the County to do - plan for a year of cutbacks. I hope you will reconsider hiring this new Public Works Director during this time of fiscal crisis. Thank you."

Commissioner Evans read an April 25, 2000 memo she prepared to the Board of County Commissioners: "Let me restate my comments of Monday and Tuesday regarding the Public Works Director interviews and hiring. Given our +/- \$2 million budget deficit, I cannot in any way support proceeding with this hiring. I support the ultimate goal of having a Public Works Director, but until we know the outcome of the Commissioner race (for which the County Surveyor is a candidate), I cannot support paying two people to do one person's job. In light of the fact that this is going to be a very painful budget situation where we will be having to cut employees in many, if not all, departments, I cannot in good conscience hire an additional employee at the salary that would be required. If indeed you decide to proceed with the interviews, I must insist that all candidates for the position be told in advance that hiring may be delayed until after June or January. To bring them here without telling them the facts would be deceptive, and in my mind, unethical."

There were no further public comments.

Routine Administrative Actions

Commissioner Kennedy moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$409,549.04. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Sale of Tax Deed Property

The tax deed auction for the 1996 36-month delinquencies has been set for April 26, 2000, by Resolution No. 2000-026. Attached to the request is a copy of the Notice of Sale of Tax Deed Land with the fair market value for each parcel as determined by Jim Fairbanks, Appraisal Office. No sale shall be made for a price less than the fair market value at the auction per M.C.A. 7-8-2301.

The Notice of Sale of Tax Deed Land 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 April 11, 2000, stating that they had the right to redeem the property prior to the auction.

The properties offered for sale:

<u>SUID #</u>	<u>LEGAL DESCRIPTION</u>	<u>FAIR MARKET VALUE</u>
3111000 22,668.00	BAY MEADOWS ADDITION as recorded in Book 14 of Plats at Page 84, now vacated by Missoula County Commissioners Resolution No. 92-051 recorded in Book 355 of Micro Records at Page 1453, LESS Spring Meadows Addition recorded in Book 17 of Plats at Page 72, Missoula County, Montana	\$
3297003 \$ 103,672.00	Lot 2 of RASER COMMERCIAL TRACTS NO. 1, a platted subdivision in Missoula County, Montana	

Michael Sehestedt stated that when property taxes go unpaid, a tax sale is held. If the property is not redeemed within 36 months after the tax sale, the County can offer the property for sale at public auction. This public auction ends the original property owner's re-purchase and redemption rights. Bids can only be accepted for fair market value, or greater, as determined by appraisal. In the event that the property does not sell at this auction, it will be re-appraised and offered once more at public auction. If it does not sell for the appraised price at that point, then the County has the jurisdiction to negotiate a private sale.

The auction on SUID # 3111000, Bay Meadows Addition, was opened. As no bids on the property were received, the auction was declared closed.

The auction on SUID #3297003, Lot 2 of Raser Commercial Tracts No. 1, was opened. As no bids on the property were received, the auction was declared closed.

Commissioner Evans moved that these matters be returned to the Clerk & Recorder with instructions to have the properties reappraised so they may again be offered for sale at auction. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Hearing: George Jones Family Transfer

Colleen Dowdall stated that no one was present for the George Jones Family Transfer and requested that action on the transfer be delayed to Wednesday, May 3, 2000.

Hearing: Miller Family Transfer (Postponed from April 5, 2000)

Colleen Dowdall presented the staff report.

This is a consideration of a request to create two family transfers for that parcel described in Tract 2, COS 4537, Section 29, Township 15 North, Range 22 West.

Kenneth J. and Judy A. Miller have submitted a request to create two parcels using the family transfer exemption to the Montana Subdivision and Platting Act. Their current parcel is approximately 46 acres in size located in the Frenchtown area off Old Highway 10 West. The Millers propose to create two parcels, each approximately five acres in size, leaving a 36 acre remainder. One parcel is for transfer to Ken Miller's son, Kenneth J. Miller II, and the other to Judy Miller's son, Bobbi Muray.

The history of the parcel is as follows: 1949 – Book 149, Page 590, 40 acres, less that owned by the railroad, transferred from Drost to Schuman; 1949-1996 – Other miscellaneous transfers that did not affect boundaries; 1996 – Book 464, Page 1137, 40 acres, less that owned by the railroad, transferred from Lombardi and Dutro to Slupski and Miller on a deed dated in 1990; 1995 – COS 4537 relocated the boundary created by the railroad ownership; 1996 – Book 464, Page 1139, Tract 2, COS 4537, transferred from Slupski to Miller.

According to the records kept by the Missoula County Surveyor, the applicant has used two boundary relocation exemptions to the Subdivision and Platting Act, both on this parcel.

Kenneth Miller stated that he took ill just before the April 5, 2000 hearing. He apologized and would answer any questions the Commissioners may have.



Commissioner Evans explained that the law on family transfers required the Commissioners to determine whether or not the applicant is trying to evade or avoid the Subdivision law. She asked if Mr. Miller's intention was to transfer a piece of property to two children?

Kenneth Miller stated that was correct.

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

Commissioner Evans moved that the Board of County Commissioners approve the request by Kenneth J. and Judy A. Miller to create two new parcels by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review.

Commissioner Evans stated that approval of the family transfer did not grant approval by the Health Department for a septic system, etc. That was a separate process. Mr. Miller would receive an approval letter for the family transfer that explains what else may be required.

Kenneth Miller stated he understood that.

Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Hearing: Buresh Family Transfer

Chairman Carey opened the public hearing.

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described in Parcel E-1-A of COS 4684, NE 1/4, Section 22, T12N, R17W.

Connie and John Buresh have submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 2.22 acres in size located near Clinton off Highway 10 West. The Bureshs propose to create a one acre parcel for transfer to Connie's parents.

The parcel has two residences on it. Due to a recording error, the property was transferred to Connie and John Bureshs name from her parents instead of just a portion of the property. She is now transferring that portion of the property that her parents residence is on back to them to correct the error.

The history of the parcel is as follows: COS 2479 created Tract E-1. COS 4684 create Tract E-1-A.

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

Connie Buresh was present and came forward to answer any questions the Commissioners might have.

Chairman Carey asked Mrs. Buresh if she understood the family transfer process.

Connie Buresh stated she understood the process.

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

Commissioner Evans moved that the Board of County Commissioners approve the request by Connie and John Buresh to create a new parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Continuation of Hearing and Decision: Request to Vacate a Portion of Clearwater Shortline Railroad Right-of-Way (Highway 12 - Lolo) - Continued from April 12, 2000

Chairman Carey continued the hearing on the request to vacate a portion of the Clearwater Shortline Railroad Right-of-Way from April 12, 2000.

This is a petition to abandon "portions of the former Clearwater Short Line Railroad Company right-of-way along Lolo Creek in Section 36, Township 12 North, Range 22 West in Missoula County, Montana."

The reasons for the request are as follows:

1. The Clearwater right-of-way only duplicates the route of U.S. Highway 12 in Section 36, and the Clearwater right-of-way is in the same location as U.S. Highway 12 at both the east and west sides of the Section.
2. As required by MCA 7-14-2615(3) and (4), the Clearwater right-of-way does not provide access to any public land or private land which cannot also be accessed by U.S. Highway 12, with the exception of the land owned by Amidnamin Manoocheche (Mike Amidi), which has other sources of legal access.

3. The abandonment of the Clearwater right-of-way will help the landowners along the right-of-way remove a cloud from title to their properties.

The following landowners have been notified:

Charles T. & Kimberly A. Satterlee, Ivy Family Living Trust, Gary R. & Dorothy M. Cooper, Ronald S. & Janice Henderson, Debra Bowey, Potomac Corp., Amidnamin Manoocheche, Willard N. Morgan, State of Montana, Bob Storer, The Burlington Northern and Santa Fe Railroad Company.

Commissioner Evans explained that many of the audience members from Lolo here today may think the Commissioners can do a blanket vacation for the entire length of the railroad right-of-way which will take care of the whole problem. That is not the case. In some areas there is more right-of-way than in others. In some areas the State has some right-of-way. It is her understanding that each parcel has to be looked at individually because the situations are different. The action before the Commissioners today is the Ivy property in Section 36.

Michael Sehestedt stated the County is treating their ownership of the Shortline properties as a right-of-way interest, acquired in 1930 by deed. The right-of-way and the incidence necessary thereto were all that could be acquired, which is one of the reasons this has to be done on a case by case basis. It needs to be determined exactly what interest the Clearwater Shortline had. In some cases their interest was acquired by condemnation, it is merely an easement interest for the purpose of constructing, operating and maintaining a railroad. In other cases, they acquired by deed in fee. The railroad's conveyance to the County failed except as to the easement interest, which means the County has the right to construct a road and use it for those purposes. If the County vacates it, the property owner is still left with the question of who owns the fee. In the one case that has been completed, following the vacation of the right-of-way, as to that portion that had been acquired in 1909 by fee, the property owners proceeded to bring a quiet title action against Burlington Northern-Santa Fe, as the successor to the Northern Pacific, which was the successor to the Clearwater Shortline, as to the fee interest underlying the County's right-of-way interest. For the County to vacate their right-of-way interest, it requires a specific petition that identifies, with reasonable certainty, the right-of-way proposed to be vacated. The County is required to give public notice of the action. Following the filing of the petition and giving of public notice, the Commissioners conduct a public hearing on whether or not it's a good idea to give up its right-of-way interest. Following the hearing, at least one County Commissioner and the County Surveyor have to make an onsite inspection of the right-of-way. Following that inspection and report, the Commissioners make a decision at a subsequent hearing as to whether or not it's in the best interest of the County to vacate the right-of-way. There is a blanket petition that has been presented that does not meet the requirements of statute. It also calls for the County to abandon all rights-of-way on easements that were part of the Clearwater Shortline right-of-way. This, unequivocally, cannot happen at least as to those parts of the right-of-way that are currently under other road right-of-way. Mr. Dayton, the attorney for the Ivys and other petitioners, has prepared an exhibit which shows the current right-of-way for Highway 12. That highway and right-of-way, in so far as its within the Highway 12 right-of-way, has been subsequently conveyed by Missoula County to the State Department of Highway. It is simply not going to be vacated, even though the County originally acquired it as part of the Clearwater Shortline. It is now part of the right-of-way for Highway 12 which provides all owners with access. Any consideration will have to be given to those portions of the right-of-way that Missoula County still retains, which are those portions of the Clearwater Shortline Railroad right-of-way that are outside the limits of existing Highway 12 and/or other built and maintained County roads. Second, the legislature, in the last session, specifically limited the ability of the County Commissioners to vacate road right-of-ways. If an examination of any portion of this indicates that the old Clearwater Shortline right-of-way provides access either to public property or to private property, for which there is not substantially equal access, then the Commissioners are without the legal authority to vacate it. This means if a citizen has property that is impacted, they first need to examine the title to see whether or not it is one of the areas in which the right-of-way had earlier been vacated, to identify the location of the right-of-way and to file a petition that meets the requirements of statute. It can then be evaluated if that right-of-way is necessary for County road purposes and whether or not that right-of-way provides access not otherwise available to public or private property. If it meets the requirements of statute, then the Commissioners can make a decision on whether or not to abandon it. Without a proper, specific petition, the Commissioners never acquire jurisdiction to abandon the road. Without publication of notice, the Commissioners do not acquire jurisdiction to vacate the road.

Peter Dayton, Worden, Thane & Haines, stated he was representing Ben and Ruby Ivy. There were other in the audience who live up Lolo Creek who were also interested in this matter. He addressed the remarks that Commissioner Evans raised about addressing only the Ivy's request.

Commissioner Evans stated that it was her understanding that the Commissioners cannot do a broad brush, everyone at once, vacation of this right-of-way because of specific differences throughout the length of the right-of-way. To do something that would take care of everybody would be delightful, but the conditions are not all the same and need to be looked at individually.

Peter Dayton stated he disagreed with that. This specific one mile section was chosen for several reasons. The State highway right-of-way and the Clearwater Shortline right-of-way are on top of each other at both the east and west sides of the section. The second reason this section worked well was that all of the Clearwater Shortline right-of-way, with one exception, was created in fee by deeds. The portion inside the State land was originally an easement and has a right of reverter. The two rights-of-way diverge enough that there is a portion of land that is not subject to any right-of-way. All the landowners in this section have land which touches the State highway, with the exception of Mike Amidi, who has other access to his property and has signed this petition. This section has the situation where it makes sense to abandon all of the portions of the Clearwater Shortline Railroad right-of-way located outside of the highway right-of-way. The abandonment of those portions within the highway right-of-way are not being requested. This matter was scheduled for a final hearing in February but at that time Horace Brown, the County Surveyor, indicated he had received a request from Montana Department of Transportation (MDT) to abandon all but those portions that are within

80 feet of the centerline of the highway, as current design standards call for a 160 foot wide right-of-way. Most of the current right-of-way is only 100 feet wide, which is 50 feet from the centerline. MDT would like an additional 30 feet of right-of-way. As this was a new request, the Commissioners delayed their decision until MDT could provide more information. He responded to MDT's request a few days later which explained that their request creates some problems and confusion because of the areas where the Clearwater Shortline right-of-way is separated from the highway right-of-way. He prepared the map being used and said what the Commissioners should agree to retain for the benefit of MDT is everything within 80 feet of the centerline in those areas where the two rights-of-way make contact. The location of the Clearwater Shortline right-of-way is very confusing and if the Commissioners tried to explain what to keep and what to abandon, title companies and landowners will not know what is what. He suggested that the Commissioners require MDT to do a detailed survey so the exact location would be known. The hearing was delayed until today to allow time for MDT to complete the survey. Unfortunately, MDT hasn't provided any more information that he originally provided with his map. No survey has been done and the map they prepared doesn't show where their right-of-way would square off, as he requested. It is the Commissioners decision as to what to abandon, all of the right-of-way or leave some of the right-of-way for the benefit of MDT. If they wish to retain some right-of-way for the benefit of MDT, he suggested the Commissioners require MDT provides a detailed survey and transfer the easement to MDT.

Commissioner Evans stated that she did not feel the Commissioners had the right to require MDT to do anything.

Peter Dayton stated it would create confusion for his clients if the County retains portions of the Clearwater Shortline right-of-way based only on a verbal description. Subsequent surveys will need to be done at considerable expense to the landowners. MDT is getting a substantial amount of right-of-way. None of these people knew of the existence of the Clearwater Shortline right-of-way. They understood that the entire right-of-way would be abandoned and they would be back where they thought they were to begin with. They feel the County is taking 30 feet of their land from them. He acknowledged that the County has owned this easement since 1930 and they are now abandoning all but 30 feet of it. The people would prefer all of it be abandoned, right up to the existing highway right-of-way.

Commissioner Kennedy stated that the original petition was for the Ivys and has now been expanded. An onsite inspection was made but he felt it did not cover the entire mile. There is no decision that could be made today on the entire mile, it would only be on the Ivy's request.

Peter Dayton corrected Commissioner Kennedy and stated that the original petition was for this one mile section.

Michael Sehestedt stated this petition does cover the entire mile. His reference was to the petition presented by the Lolo Community Council today.

Commissioner Kennedy stated the site review was only on the Ivy property.

Peter Dayton stated again that his petition, prepared for the Ivys, did cover the entire mile.

Commissioner Kennedy stated he asked the MDT representative about any plans they may have for expansion of the highway. The response was that there were no plans within six years for expansion of the highway. The right-of-way for the highway is currently 100 feet and he did not understand the speculative need for the additional 30 feet of right-of-way. Without a satisfactory answer, it seems simple to abandon the entire Clearwater Shortline right-of-way.

Peter Dayton stated they would like all portions of the Clearwater Shortline right-of-way, which lie outside of the current highway right-of-way, abandoned.

Commissioner Evans stated that this highway will be used heavily in the coming months and years due to the Lewis and Clark Bicentennial and it may be necessary for MDT to improve or widen the highway to accommodate the increased traffic. In addition, she did not wish to summarily say no to MDT's request. MDT has always been willing to help Missoula County with road repairs. She was not willing to take away from MDT what they are asking for without the survey Mr. Dayton suggested. She did not want to delay this matter further, but she was not willing to make a decision that was not based on facts. She would like to hear what MDT has to say and what the citizens have to say. She did not want to take anything from the landowners that was rightfully theirs. However, as the easement is the County's already, she was willing to give up that portion which is not needed but not without some definitive description.

Horace Brown stated the site inspection was done on the entire mile noted in the petition. He asked Michael Sehestedt what the regulation was with public agencies when the County has the right-of-way to be vacated and another agency has a need for it.

Michael Sehestedt stated there was no regulation. MDT has the right to acquire and build roads over County right-of-way. In this situation, there is no immediate plan for construction. The County is being asked to retain a portion of the right-of-way it already has against the fact that since the highway was built, highway design standards have changed. The thinking is that MDT may be doing improvements to the highway at some point in time that will require the acquisition of additional right-of-way. If the County gives away the right-of-way it has at this time, the landowners will be extremely unlikely to give it back. MDT would have to purchase the right-of-way which the County had and gave away, which costs all the taxpayers money. He was not in a position to say whether the need was real or speculative. It is not a legal issue, it is a question of public policy.

Barry Bartlett stated he lived further down Lolo Creek and had a couple questions for the MDT representative. What is the lead time for highway funding and planning for the widening of the highway before the Lewis and Clark Bicentennial? He felt that it was already too late for such a project. This petition addresses only one mile of the

highway, what about further up or down the highway. Is the easement 100 feet at this time? If it is, then the highway would need to acquire additional easement.

Maureen Walsh, Montana Department of Transportation Right-of-way Division, stated that a survey has begun. MDT believes that this right-of-way is currently in a public agency's hands and to relinquish it and have to reacquire it at some later time does not make economical sense to the taxpayers. MDT has nothing in their current phased planning for expansion of the highway, but it will be done sometime in the future, and at that time they will need 80 feet of right-of-way from the centerline of the roadway on both sides to bring it to today's standards.

Cleva Moore asked what the right-of-way width from the centerline was when the highway was first designed?

Maureen Walsh stated that federal minimum standards today require 80 feet of right-of-way from the centerline. Design standards have changed since the road was originally constructed. In order to get federal funding, highways have to be built to those standards.

Cleva Moore understood that the design standards have changed. She asked how much more right-of-way MDT would require, how much more of her property would be taken away?

Michael Sehestedt stated no one is asking to take anything. In reality, since 1930, the County has owned this easement. If the title policy doesn't show this as an exception, there may be a claim against the title company. If the title policy does show the exception, then the landowner should have known about the right-of-way. The fee has always been encumbered. The people that sold the land didn't own this property. The railroad owned it, then the County acquired its interest from the railroad. If land within the right-of-way was included in the sale, it was being sold incorrectly and a claim would be against the former owner. The County is now trying to clear up the matter and legally abandon all that can be that isn't required for any public purpose in the future. The County is not taking anything, that needs to be clearly understood. This property was bought and paid for by the railroad in 1908-1909. Clearwater transferred it to Northern Pacific. Northern Pacific transferred it to Missoula County. The question to be answered is whether or not the County is going to abandon all of the Clearwater Shortline outside the existing highway right-of-way or if the County is going to retain portions of the Clearwater Shortline right-of-way outside the existing highway right-of-way against a future need. If someone owns property adjacent to the highway that is not subject to this Clearwater Shortline easement and MDT needs the property, MDT will have to condemn it. If this easement is completely vacated and MDT later requires some of the property the County could have retained, they will have to purchase it through condemnation. If that happens, all Missoula County taxpayers have made a gift to the landowner by giving property that Missoula County owns and then in the future the landowner receives money from all of the taxpayers to reacquire the land. The Board is trying to determine if there is a realistic expectation that this existing right-of-way that is outside the highway right-of-way will be needed sometime in the future. If it is, then it is not sensible to give it up now and have to repurchase it later. If it is not needed, it should be vacated and the title cleared. There are other County roads in the area that are inside and outside this right-of-way that the Lolo Community Council asked not be abandoned when the question was raised several years ago. The County is trying to clear title but they do not want to give away something that is of value to everyone in the process.

Commissioner Evans stated it is also a question of how much of the County's easement the Board is willing to give away. She was not willing to take away from MDT that which they think they need. She considers that highway a very busy highway and it will be even busier in the future. She will support vacating only that portion which is outside the 80 feet from the centerline of the highway.

Mary Ann Bonjorni asked who has been paying taxes on this easement?

Michael Sehestedt stated taxes are paid by the owner of the underlying fee, which may be the landowner. The fee is burdened by the easement, just like taxes have been paid under the easement to the power line that serves the property. Even though there is an easement granted for the power lines, the landowner pays the taxes. The County only claims an easement interest. If the landowner feels the taxes are too high because the property is burdened by an easement, that is a matter for the landowner to take up with the Department of Revenue. He further explained that property is a bundle of rights: the right to exclude others, the right to dig gold, the right to build a road. When the County acquires a road right-of-way for County purposes, all the County acquires is the right to use the land for a public right-of-way and all other incidental purposes. The property owner retains title to the timber that grows on the land and can use that property for any purpose that is not inconsistent with the County's use of it for road right-of-way purposes. In many cases where there is a 60 foot right-of-way on a traditional County road and a road improvement project is done, the County has to cut the timber for the property owner. In some cases, the property owner pastures or grazes within the road right-of-way, which is acceptable as long as the use is not inconsistent with the County's use for public road purposes. Use of a road right-of-way carries with it by statute the ability to run power lines, gas, water and similar transportation related utilities within the right-of-way.

Mary Ann Bonjorni asked if there would be a motion made to put in assessment needs for MDT? She felt the property owners were "landlocked" without knowing MDT's needs and getting them in writing. If MDT needs additional right-of-way to comply with federal regulations, then the property owner needs that on a survey.

Peter Dayton stated that if the County is going to agree to retain the right-of-way requested by MDT, to clarify where that right-of-way is, MDT should be asked to do a survey. They are getting the land for free and could at least do the survey to clear up some of these title problems. The Commissioners could say to MDT that they will retain 30 feet of right-of-way for MDT's use in the future, if and only if, it is surveyed so the adjoining landowners know where the right-of-way is. He felt that was reasonable.

Michael Sehestedt stated that if the Commissioners chose that course of action, it has to be time limited. MDT would have to complete a survey within a specific period of time.

Mary Ann Bonjorni stated that needs to be expedited. This has been in discussion for a long time.

Peter Dayton stated that Commissioner Evans had suggested to delay the decision again while MDT prepared their survey. All these people have come to the meeting expecting a decision. He requested the Board decide one way or the other what they were going to do now. If they are going to retain that 30 feet for MDT, that the decision not be final until the survey is prepared to be used as the basis for the resolution and as an exhibit.

Commissioner Evans asked Ms. Walsh how soon the survey could be completed?

Maureen Walsh stated the survey was started last week. She suspected it could be done in 30 days.

Mary Ann Bonjorni asked if the survey was being done for the one mile section or the entire Clearwater Shortline right-of-way.

Maureen Walsh stated it was for the one mile section.

Peter Dayton stated this petition only pertains to the one mile section in Section 36. Several people present own land outside of this section. The reason for their presence today was they may be worried that in the future, if they come in to request an abandonment, however the County decides on this one mile section, it will decide the same as it pertains to their land. Other property may be subject to the Clearwater Shortline right-of-way and today's decision might set a precedent as to what will happen in the future.

Ramona Holt stated she was probably one of the oldest landowners on Lolo Creek. She was aware of this situation in 1948 when she purchased her property and started an action to try to get the County to vacate this. She was unsuccessful, however, there were pieces of property that did revert back to landowners through quit claim. In the spirit of fairness, this needs to be considered as to what will be done in the future to the remaining landowners, despite what the State may or may not need in the future. MDT has no plans for the road in their six year plan. This action needs to be addressed as to what is needed today, not what may be done in the future. She realized the road may need to be widened. Visitors for the Lewis and Clark Bicentennial will come to the area, but the road would not be ready by then.

Commissioner Evans stated she was proposing that the Board observe the request of MDT and that the Commissioners vacate everything that is beyond 80 feet from the centerline. The reason is that Highway 12 is a major highway and will become even busier. Even though it is not in MDT's six year plan, at some time in the future it will need to be fixed and widened. She could not give away right-of-way which would have to be repurchased. The County will give back to the landowners less than they hoped for, but something the County does not have to give back at all.

Ramona Holt stated that the landowners are paying taxes on this land.

Commissioner Evans stated that is something all property owners have to do. A utility easement could be dug up at any time, it is part of owning property.

Ramona Holt stated that in the spirit of fairness this should be considered in the same vane as quit claims were done in the past.

Commissioner Kennedy stated Ms. Holt point about the fairness of this was valid. There have been areas that have been quit claimed in the past. He pointed out that the County only has right-of-way interest for transportation purposes. The argument could be made that the County should retain all of the right-of-way as someday a superhighway might be built. The question is what is a reasonable amount of right-of-way to retain for some future project. The answer today is unknown. MDT cannot provide an answer. Having done transportation design, he felt there was no absolute as to the width of right-of-ways throughout the United States. Accommodations have to be made in certain areas. The Board has to make a judgement if there is any reasonable advancement by MDT that they will need this right-of-way. The question has been asked since last February and no specific answer has been received, only that it may be done sometime in the future. That is not sufficient reason for him to dedicate right-of-way for a speculative future purpose. He offered a motion that abandons the right-of-way outside of the existing 100 foot right-of-way that exists today for the highway.

Commissioner Evans stated she had already made a motion to vacate everything outside of the 80 feet of the centerline on this one mile section.

Michael Sehestedt stated neither motion had been seconded.

Peter Dayton suggested a change to Commissioner Evans' motion. His concern was that if the Board retains part of the right-of-way that is within 80 feet of the centerline, it will leave a long, pointed strip which is of little use. He had previously suggested some alternative language which would square off the retained right-of-way.

Commissioner Evans stated that she understood what Mr. Dayton was trying to get at, but it was clear that if no right-of-way existed, MDT would have to buy it. The fact that the Board does not address that is not critical. MDT will know what they have and the landowners will know what they have.

Commissioner Kennedy stated that the matter of urgency had been asked before and he understood people would like the cloud removed from their title. He asked what the urgency was of taking action today. MDT has stated a survey is under way and perhaps they could be pressed a little further about their future needs. There had also been some

question as to where to establish the centerline, from the staked (or legal) right-of-way or the existing, constructed right-of-way.

Peter Dayton stated his suggested language used the staked centerline. He believed that in this section, the staked and constructed centerlines were the same. They may be different in other locations.

Michael Sehestedt stated he did not have an issue with the measurement used, the only time it created a problem was when the two diverged significantly.

Maureen Walsh stated there was an approximate 7 foot difference in one area (about 250 feet) of the westerly side of this one mile section. The staked and actual centerlines diverged and MDT would request an additional 7 feet from the staked centerline. In the rest of the section, the two centerlines are the same. The minimum standard for right-of-way was 160 feet. It was not a question of if the highway would be widened, but when it would be widened.

Commissioner Kennedy stated that standards can change and someday it may be 100 feet from the centerline.

Maureen Walsh stated that could happen but then MDT would only need an additional 20 feet as 80 feet was already there.

Michael Sehestedt stated one or the other of the motions needs to be properly brought before the Board and seconded. Then discussion and action on the motion can proceed.

Commissioner Evans stated today's action was on this one mile section only. The property outside of this would need to be handled separately. This action does not include the entire length of the Clearwater Shortline Railroad right-of-way.

Peter Dayton stated that the Board should make the decision if they were going to abandon all of the right-of-way or retain some for MDT purposes. If all the right-of-way is abandoned, the process is done. If the 30 feet is retained, a decision remains as to leaving long pointed strips or squaring the right-of-way. A survey from MDT would provide final details to be used as an exhibit of what had been retained.

Commissioner Evans asked Michael Sehestedt and Mr. Dayton to assist with her motion. She wanted to make sure the MDT survey was done as quickly as possible, perhaps within 30 days, and that the County abandon anything that is beyond 80 feet on each side of the centerline. Would they help compose language for a motion to accomplish this action.

Michael Sehestedt stated that he believed if the County was to retain part of the right-of-way, that it should be at those points where the Clearwater Shortline right-of-way is contiguous to the existing highway right-of-way, retain that portion of the right-of-way that is within 80 feet of the constructed centerline.

Maureen Walsh stated that would accomplish what they wanted. They would like to retain 80 feet from the constructed centerline.

Peter Dayton stated that to be consistent with Ms. Walsh's comments, he would change his suggested language to read from the "constructed" centerline as opposed to the "staked" centerline.

Commissioner Evans moved that the Board of County Commissioners approve the petition to abandon portions of the former Clearwater Shortline Railroad Company right-of-way along Lolo Creek in Section 36, Township 12 North, Range 22 West, in Missoula County, Montana; more specifically in the areas where the Clearwater right-of-way and the U.S. Highway 12 right-of-way overlap, the Commission abandons its easement over all portions of the Clearwater right-of-way located more than eighty feet from the constructed centerline of U.S. Highway 12, as shown on the Montana Department of Highway plans for Project No. S-391(2). In the areas where the Clearwater right-of-way and the U.S. Highway 12 right-of-way do not overlap, the Commission abandons its easement over all portions of the Clearwater right-of-way located outside of the right-of-way for U.S. Highway 12, as shown on the Montana Department of Highway plans for Project No. S-391(12).

Mary Ann Bonjorni asked if this motion was seconded and passed, was the landowner giving up some land to the State?

Peter Dayton stated that landowners were not giving up anything to the State. The Clearwater right-of-way was established in 1909-1910 and either bought land or acquired easements at that time. In 1930 the railroad transferred an easement to the County. The County is not taking anything. The County is giving the landowner some land that the County currently has, but a little less than was requested.

Mary Ann Bonjorni asked why this was not happening through condemnation?

Peter Dayton stated the County already owned the easement.

Mary Ann Bonjorni stated this was setting a precedent, the County was retaining some of the right-of-way. However, in the past some of this right-of-way was abandoned and given back to the property owners which also set a precedent. She did not feel that any of the landowners should be giving anything to the County without condemnation, receiving fair market value.

Michael Sehestedt stated the bottom line is who owns the land. If the title company did not show this as an exception, there is a possible claim against the title policy. If the title company showed it as an exception and it was ignored, he

did not have a response. On the Hale property, there were three different parcels and three different title policies. Two of three showed the deed to the County as an exception. There are some pieces of property where it was deeded back, however the research on the entire length of the Clearwater right-of-way was far too involved. In most of the cases where there was a release of the County's interest, there was stated exchange. There are a few that were quit claimed that have no further explanation in the Commissioners journals. That is why each piece of property has to be looked at individually. In some cases the only interest the County has is to build and maintain a railroad.

Roy Van Ostrand asked for a clarification on the terms "vacate," "abandon" and "give away."

Michael Sehestedt stated there was no difference between "vacate" and "abandon." They could be used interchangeably. To "give away" would be to deed to someone without consideration a property interest that is validly held by them. Just give it to them because the County likes them, with no money. To "give away" is to transfer without getting anything of equal value in return.

Chairman Carey stated that he would second the motion that Commissioner Evans made.

Commissioner Kennedy explained which parts of the right-of-way were to be abandoned.

Commissioner Evans stated that if MDT wanted to widen the highway and they did not have right-of-way they could obtain it through condemnation and/or purchase.

Ben Ivy stated he did not know how many feet Commissioner Kennedy was referring to. It crosses his property. There were structures in the middle of the right-of-way. He wants his title cleared up.

Commissioner Evans stated she was willing to abandon everything except what MDT has asked the Board to retain.

Ben Ivy stated it could be 100 years before anything was done to the highway.

Commissioner Evans stated that this highway has undergone many drastic changes in the past 60 years, and in 10 or 20 years it may change drastically again.

Ben Ivy stated this should be given back to the landowner without exception. He believed there was a right of reverter on it.

Michael Sehestedt stated the right of reverter varies, and on other pieces title was acquired in different ways. That is why each piece needs to be looked at individually.

Ben Ivy stated he would like the County to abandon all of the right-of-way and let the State purchase what they need when they need it.

Mary Ann Bonjorni stated that even though it was dated, a precedent had been set in the 1940's with a quit claim deed.

Ben Ivy stated there was another action just a few months ago on the Hale property.

Michael Sehestedt stated that following a vacation procedure, a quit claim deed was filed to back up the abandonment, to work toward quieting the title. No determination was made as to retaining a portion of the right-of-way for MDT as the question was not raised. To clear up the title with Burlington Northern the County has agreed to back up the vacation action by a quit claim.

Mary Ann Bonjorni stated it seems there is a precedent and today's action changes the precedent. All landowners will be subject to this procedure.

Michael Sehestedt stated the quit claim deeds done in the past he presumed were done based on payment of fair market value. If landowners want to take the position that the County has a fee interest that can be dealt with by quit claim, then an appraisal and sale will need to be done. He felt landowners would not want to take that route.

Commissioner Evans stated that if that route was taken and the land was sold for significantly less than the appraisal, the auditor would charge four times the value of the loss.

Mary Ann Bonjorni asked what happened in the previous instances?

Michael Sehestedt stated the last one done that he could find was 40 years ago. He presumed it was a purchase. There are significant problems with vacating an easement. Missoula County has a fee interest. That means to clear the title, landowners are looking at paying fair market value.

Ramona Holt stated that the information provided by Mr. Dayton showed the ones in the 1940s were done by quit claim.

Peter Dayton stated there were a number of quit claim deeds from the County to various landowners up and down this 20 mile section of Clearwater Shortline right-of-way. Most of those, as Michael Sehestedt said, appeared to be a trade. They may have been some done another way which could be viewed as a precedent. At the most recent Hale transaction, MDT had not made a request to retain any right-of-way.

Michael Sehestedt stated the Hale transaction was a vacation, just like this proceeding. Half of the Hale transaction was a parcel acquired by condemnation, it was merely the right to operate a railroad. On the balance of the Hale

transaction the County vacated their roadway interest. The County quit claimed the right-of-way interest following the completion of the vacation procedure. The Hales then filed a lawsuit against Burlington Northern/Santa Fe as a successor to the Northern Pacific and did a complete quiet title to clear out that residual, underlying fee interest which the railroad still theoretically had. That is the procedure other landowners should use to clear this right-of-way out. A County road right-of-way, once established, remains a County road until it is either vacated, following notice and hearing, or vacated by operation of law.

Mary Ann Bonjorni asked if the Hales were successful?

Michael Sehestedt stated they were. They came in with a petition just like this one, and the Hale's petition was granted. Part of the reason MDT may not have been interested in retaining any right-of-way on the Hale property is that essentially that is where the creek runs now. MDT did not ask to retain any right-of-way in that area so none was retained. The petition to vacate was granted. The Hales then took subsequent legal action to quiet their title. The County is trying to get that first step done on this request. The question is how much is the County going to give up. A motion has been made and seconded that the County will give up everything but 30 feet of the easement they have.

Mary Ann Bonjorni encouraged the Commissioners to not approve this action and to vacate all of the right-of-way, based on the precedent.

Commissioner Evans asked is Ms. Bonjorni was suggesting the County not give up any of the right-of-way.

Mary Ann Bonjorni stated it seemed there was a precedent, even though it was years ago, for dealing with this. What is not being acknowledged is what will benefit the rest of the landowners.

Commissioner Evans stated it will also be a detriment to everybody else if MDT has to buy land with all the taxpayers money to pay the landowner what was given to them by the County with no compensation to the County.

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

Commissioner Kennedy stated he could not favor the motion. He also suggested that more was needed from MDT than what is contained in their official letter, their desire for additional right-of-way based on current highway design standards. That was insufficient to him to support MDT's position for additional right-of-way to be retained. He would look at a favorable vote if the motion was conditioned on a demand on MDT to come in with some sort of plan that shows how this additional right-of-way will be used.

Commissioner Evans stated that part of her motion was that the survey be completed.

Ben Ivy asked that a date be set with MDT to have this survey complete, otherwise they get their property back.

Commissioner Evans couldn't agree to that but did ask for the survey to be completed within 60 days.

Chairman Carey asked if it would be possible for MDT to present some plan for the future use of the highway.

Maureen Walsh indicated it would not be possible.

Commissioner Kennedy stated the standard is just that, a standard, and it is meant to be diverted from. For MDT to assert they need always 160 feet of right-of-way in every case is simply inaccurate.

Tom Welch stated he lived in Lolo. He attended the meeting because of Ben and Ruby and asked if this discussion was about just this one mile section? Would other landowners have to come and repeat this process?

Commissioner Evans indicated that this hearing was just on this one mile section and other landowners would have to file separate petitions.

Tom Welch stated that whatever happens on this one mile section will determine what will happen on the rest of the right-of-way.

Commissioner Evans stated that the configuration and location of the right-of-way may be different in different locations. That is part of the problem and why each request must be done on an individual basis. When the Hale petition was first presented, she suggested taking care of the entire length of the right-of-way. She was told the situation is not the same the full length of the right-of-way and cannot be done all at once.

Tom Welch stated that there were homes in that right-of-way. He felt all the right-of-way should be abandoned and if and when MDT wanted to improve the highway, they should purchase whatever right-of-way they need.

Karen Schmidt stated that Highway 12 is a lovely, two-lane highway through Forest Service land. It doesn't make sense to have it expanded. The reason people will come to visit is because it is lovely and pristine. She felt it was ludicrous for MDT to take 30 feet on each side. In some places there isn't 30 feet to give, the creek is there.

Chairman Carey stated that if this motion passes, the County is giving some of this land back to the landowner. The County is giving up something they have. He agreed with Commissioner Evans that it is not responsible to give it all back and then have to repurchase it at some later date. That is not responsible to the voters and taxpayers of Missoula County or the state. He then called the question.

The motion passed on a vote of 2-1 (Commissioner Kennedy opposed).

Commissioner Evans reinforced the need for MDT to prepare a survey, with any plans that may be possible, as soon as possible, definitely before 60 days.

There being no further business to come before the Board, the Commissioners were in recess at 3:10 p.m.

THURSDAY, APRIL 27, 2000

The Board of County Commissioners met in regular session; all three members were present. The Commissioners participated in the interviews of the Public Works Director candidates, attended the reception for the candidates and also attended the question and answer session held at City Council Chambers in the afternoon.

Claims List -- Commissioners Carey and Kennedy signed the Claims List, dated April 25, 2000, batch numbers 608, 609, 610 and 615, with a grand total of \$201,036.85. The Claims List was returned to the Accounting Department.

Claims List -- Commissioners Carey and Kennedy signed the Claims List, dated April 25, 2000, batch number 612, with a grand total of \$3,171.94. The Claims List was returned to the Accounting Department.

Claims List -- Commissioners Carey and Kennedy signed the Claims List, dated April 27, 2000, batch numbers 616, 617, 618, 619, 621 and 622, with a grand total of \$148,832.80. The Claims List was returned to the Accounting Department.

Professional Services Contract -- The Commissioners signed a Professional Services Contract with Zekra Brasher, Fighting Back Self-Defense for Woman to provide four, two-hour self-defense classes for women in Seeley Lake through the Seeley Lake Outreach Crime Victims' Advocate's Office. Total fiscal impact will be \$300.00 which is in the STOP VAWA grant budget for FY2000. The term shall be for May 1, 2000 only.

FRIDAY, APRIL 28, 2000

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

Monthly Report -- Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John Odlin, for the month ending April 30, 2000.

Lease Agreement -- The Commissioners signed a Lease Agreement with the Backwoods BMX Club for the property located in the southern portion of Tract 3 of Certificate of Survey 3323, on file and of record in files of Missoula County Clerk and Recorder, to be use for operating and maintaining a non-motorized bicycle motocross track and bicycle races, and other related uses. The term will be May 1, 2000 through April 30, 2001; and the improvements made to the property will constitute the lease payment for this lease year.

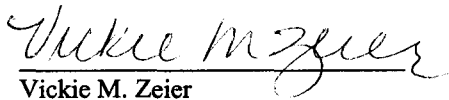
Agreements -- Chairman Carey signed two Agreements with the Montana Department of Transportation, Traffic Safety Bureau:

1. For Overtime Patrol Salaries and Benefits, to be completed no later than September 30, 2000, and shall not exceed \$5,000.00.
2. For Six Radar Units, to be completed no later than June 15, 2000, and not to exceed \$5,250.00.

The documents were returned to Don Morman in the Sheriff's Department for further handling.

Contracts -- The Commissioners signed two Contracts for asbestos removal at the LaLonde Ranch, located at 5150 Highway 10 West, Missoula Development Park, Phase 2:

1. With Western States Abatement to provide all labor, equipment and disposal to remove asbestos containing floor tiles, and to coordinate with MCS Environmental, Incorporated to perform air clearance samples after the floor tiles have been successfully removed and disposed of. The term shall be April 28, 2000 through May 5, 2000. The total amount shall not exceed \$4,200.00.
2. With MCS Environmental, Incorporated to perform air clearance samples after Western States Abatement has removed and disposed of asbestos containing floor tiles. The term shall be April 28, 2000 through May 5, 2000. The total amount shall not exceed \$350.00.


Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chairman
Board of County Commissioners

MONDAY, MAY 1, 2000

The Board of County Commissioners did not meet in regular session. Commissioner Kennedy was in Spokane, WA attending an ICBEMP Meeting; Commissioner Carey was out of the office all day; and Commissioner Evans was out of the office until noon.

TUESDAY, MAY 2, 2000

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

Claims List – Chairman Carey and Commissioner Kennedy signed the Claims List, dated May 2, 2000, batch numbers 623, 625, 626, (pages 1-8) with a grand total of \$86,172.59. The Claims List was returned to the Accounting Department.

Claims List -- Chairman Carey and Commissioner Kennedy signed the Claims List, dated May 2, 2000, batch number 624, (pages 1-2) with a grand total of \$6,738.15. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Statement of Work – The Commissioners signed the contract for the Fiscal Year 2001 Statement of Work for the Missoula County Office of Emergency Management. Each year, Missoula County agrees to complete certain emergency management-related tasks in order to comply with federal regulations. The Statement of Work describes the OEM work plan for the upcoming year. The Missoula County Office of Emergency Management can receive up to \$41,000 in reimbursable costs by complying with the Statement of Work. The request was returned to Bill Silverman in the Office of Emergency Management for further handling.

Agreement – The Commissioners signed an Agreement between the Missoula Office of Planning and Grants and the Montana Department of Transportation to fund the Missoula Transportation demand Management (TDM) Program Phase II Year 2 (Spring 2000 through spring 2001). The total amount of \$125,000 would come from the Congestion Mitigation and Air Quality (CMAQ) funding source.

Other items included:

- 1) The Commissioners approved a request to enter an order in the minutes declaring the Target Range Sewer and Water District organized following the election held on April 5, 2000. The Elections Office will send a certificate to the Secretary of State in Helena.
- 2) The Commissioners approved Circle B Ranch's proposal to El Mar Estates to purchase the hay crop on G-G Tract for 20.00 per ton on the stump, not including the first season's crop. Circle B Ranch will provide the equipment and personnel to do the work described herein at their own expense. Missoula County would need to irrigate the crop at their own expense. Circle B Ranch will remove the first season's crop (2 cuttings) at -0- charge to Circle B Ranch or Missoula County. Circle B Ranch will sample weigh every 5th load of hay and provide those weights to Missoula County. At the end of each harvest Circle B Ranch will pay in full all sums due.
- 3) The Commissioners reviewed and approved Circle B Ranch's proposal to El Mar Estates to farm the G-G acreage as follows:
 - (a) Chisel plow the area to loosen the ground;
 - (b) Disc the area twice to condition the soil;
 - (c) Roller harrow the area to make a seed bed; and
 - (d) Seed the area with billion seeder.

The seeding shall be done as recommended in the Montana Extension Service bulletin with Missoula County furnishing the variety of seed desired. The above work shall be invoiced at \$125 per acre based on 54 acres of the G-G tract. The total shall be \$6,750.00, payable upon completion of work. The proposal was approved.

- 4) An update was given on the Community Youth Justice Council by Dori Brownlow.

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

WEDNESDAY, MAY 3, 2000

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, Commissioner Kennedy attended a special meeting of the Air Pollution Control Board.

Indemnity Bond – Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Mainstay Funds as principal for Warrant #24068, now unable to be found, issued March 16, 2000 on the Missoula County MCPS Claims Fund in the amount of \$1,700.

Monthly Report – Chairman Carey examined, approved, and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, for the month ending April 28, 2000.

Monthly Report – Chairman Carey examined, approved, and ordered filed the Report of the Clerk of the District Court, Kathleen Breuer, showing fees and collections made in Missoula County, Missoula, Montana, for the month ending April 28, 2000.

Home Contract – Chairman Carey signed Home Contract #M99-SG300105, entered into by Missoula County, 200 West Broadway (the "Grantee"), and the State of Montana Department of Commerce, Helena, Montana (the "Department"). The Contract is to provide funding for project activities approved by the Department under the Montana Home Investment Partnerships Program (HOME); and to achieve the purposes of Title II of the *Cranston-Gonzalez National Affordable Housing Act*, as amended. The Contract takes effect on December 2, 1999 and will be in effect for the "period of affordability," which is twenty years. The Grantee will carry out the activities as set forth in the Grantee's application for HOME grant-assistance received October 4, 1999. The major components of the project includes new construction of two four-bedroom group home housing units to serve eight low income, physically disabled citizens within Missoula County. The total amount to be awarded to the Grantee will not exceed \$231,414 (\$214,414 in HOME project funds and \$17,000 in HOME administration funds.) The Contract was returned to Cindy Wulfekuhle in the Office of Planning and Grants for further signatures and handling.

PUBLIC MEETING – May 3, 2000

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

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$241,743.54. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Hearing: George Jones Family Transfer – (Postponed from April 26, 2000)

Colleen Dowdall stated Mr. Jones was on a job site and requested that action on the transfer be delayed one more week to Wednesday, May 10, 2000.

Commissioners Evans asked counsel if there was any reason the petitioner had to be present for a Family Transfer? Was there anything unusual about this request? Why was the petitioner required to be present?

Michael Sehestedt stated, for the record, that on Family Transfers it was necessary for the petitioner to be present so they could state, for the record, that the request was what they proposed to do and that they understood the process. It gives a chance for the petitioner to note their understanding that approval of the Family Transfer request is not approval for zoning, sanitary restrictions being lifted, there was no representation that services were available and that the transfer would need to be completed as described.

Continuation of Hearing and Decision On: Rock Creek Airpark (11 lot subdivision) – 22 miles east of Missoula – (Continued from April 19, 2000)

Chairman Carey continued the hearing on Rock Creek Airpark from April 19, 2000.

Jennie Dixon, Office of Planning and Grants, presented a brief update.

A public hearing was conducted on April 19, 2000 and some issues were raised regarding the floodplain and environmentally sensitive substances. Since the last meeting, she has prepared some suggested amended conditions based on the Commissioners concerned from the previous meeting.

There was a minor change to Condition 6 regarding living and/or being in close proximity to an airfield. Amended Condition 7 deals with the landscaping requirement along Downwind Drive. No less than 2 trees per lot frontage would be required. This was a request by the applicant to modify the condition slightly.

Amended Condition 9 deals with groundwater and floodplain issues. After some discussion and review by the Floodplain Administrator Brian Maiorano, it was suggested that residential dwellings and sewage treatment systems would not be permitted on the site. Lot 1 is a residence and hanger with an existing septic system and that could remain. Lots 2-11 would not be permitted by this condition to gain a permit for a septic system. This condition also requires property owners to comply with the Floodplain Regulations and to seek a floodplain permit before constructing any permanent structures. At Planning Status, it was suggested that one floodplain permit could be granted for the entire project as a package deal. That would be acceptable to the Floodplain Administrator. Part B of

Condition 9 requires base flood elevations to be shown on the plat. Part C was eliminated because of new information. Part D (now Part C) was amended to say that there needs to be a statement on the face of the plat indicating that the railroad berm was neither constructed nor maintained as a flood control levee.

There are two additional conditions for consideration. Additional Condition 10 would required the covenants be revised to prohibit aviation refueling and/or storage of large amounts of hazardous materials. Additional Condition 11 would not allow amending certain sections of the covenants without governing body approval.

Peter Nielsen of the Missoula City-County Health Department provided a detailed response to the questions raised about hazardous materials. One question was regarding Lot 1 and its possible use as a commercial hanger for airplane maintenance. Would that pose any potential hazard for the septic system and would it need to be upgraded? Mr. Nielsen's response was that a new septic permit or upgrade would not be required. He did make mention of what type of disposal system would be permitted. The second question regarded what the regulations required as to restrictions for storage of hazardous materials in an area prone to flooding. The current condition permits small amounts and was that quantified. His response was that up to 25 gallons would be allowed. If over 25 gallons were stored, state regulations would apply. The subdivider has indicated that hazardous material would be in quantities much less than 25 gallons. The condition could be quantified further if the Commissioners wanted.

Ron Ewart, Eli and Associates, developer's representative, stated that the developer was in agreement with the conditions. They are workable and fair and will protect the property.

There being no further public comments, the Public Hearing was closed.

Commissioner Evans asked is Amended Condition 6, holding Missoula County harmless from any liability associated with the use of the airstrip, was secure.

Colleen Dowdall stated the County Attorney's Office drafted the language and it was as safe as it could be. The point was to let the developer know that if anything happens, the County is not assuming any liability, the developer assumes that liability for the County for anything that might happen on the airstrip.

Chairman Carey asked if the term should be "airpark."

Colleen Dowdall stated that it was the airstrip that the County did not want any liability for.

Commissioner Evans asked about the potential of flooding.

Jennie Dixon stated that Amended Condition 9 covered potential flooding. Amended Condition 9C states: "This property is within the 100-year floodplain of the Clark Fork River, even though the Flood Insurance Rate Maps depict it as outside a flood hazard zone. The property lies three to four feet below the 100-year flood elevation and could be threatened during a flood by surfacing groundwater and the river breaching the railroad berm. The railroad berm was neither constructed nor is it maintained as a flood control levee. Neither Missoula County nor Montana Rail Link guarantees that the railroad berm will prevent the river flood waters from entering this property." That was staff's recommendation to give full disclosure that the developer was accepting the risk.

Commissioner Kennedy stated in 9C there was a reference that the property "could" be threatened during a flood. He suggested changing the word to "would." That doesn't mean there would be damage, but it does mean it would be threatened by rising water or water breaching the railroad berm.

Colleen Dowdall had no problem with the change.

Commissioner Evans asked if Mr. Datsopoulos had a problem with the wording change.

Milt Datsopoulos stated he has been working with the applicant for over a year who has been totally responsive to the concerns that have been raised. Mr. Lundberg has owned the property for some time and has put a substantial amount of money into it. This proposal meets most of those concerns without threatening the utilization of the property. He personally endorses this proposal. It has been hard for Mr. Lundberg to accept the changes as it is a long way from what he had envisioned when he acquired the property.

Commissioner Evans stated that she understood that Mr. Datsopoulos preferred the word remain "could."

Milt Datsopoulos stated that was his preference. He did not feel there was scientific evidence to warrant changing from "could" to "would." The statement discloses to the public the potential of flooding. Without some scientific evidence, he felt changing the word was inappropriate.

Commissioner Kennedy stated if the sentence is read in its entirety, it assumes that there will be surfacing ground water and a breach of the berm. It doesn't say there would be damage, it says it would be threatened. Under those circumstances, he felt there would be no disagreement that it would be threatened.

Milt Datsopoulos stated he understood what Commissioner Kennedy was saying but felt that it sent the wrong message to the public that there would be damage. He felt the use of "could" gave the same amount of warning to the public.

Commissioner Evans stated she agreed.

Chairman Carey also agreed to leave the word as "could."



Commissioner Kennedy stated he would like the comments by Peter Nielsen to be part of the record. Mr. Nielsen made reference to the fact that a floor drain which would drain to the septic system would not be permitted. Did the developer notice that comment?

Michael Sehestedt stated that was an EPA requirement.

Commissioner Kennedy wanted the developer to be aware of that. It was not a County requirement, but one of the Environmental Protection Agency.

Commissioner Evans stated she had a problem with inserting an e-mail into the public record. She would prefer that the last part of the e-mail beginning "Dear Peter" not be included.

Commissioner Kennedy stated he was concerned with getting into the record the answers to the questions asked about the disposal of the hazardous materials and that the applicant was aware of those answers.

Colleen Dowdall stated the last part of the e-mail, where those questions were posed, was acceptable to her to be in the record, so that it is clear what Mr. Nielsen was responding to.

Chairman Carey stated the entire e-mail would be part of the record.

Jennie Dixon stated Mr. Ewart just brought another item to her attention related to Condition 5, regarding the parks requirement. The parks requirement is for a residential subdivision which this is no longer. The subdivider is not willing to pay cash-in-lieu and the last part of the sentence regarding parks should be deleted.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-2(5)(A) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision, based on the findings of fact set forth in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the Rock Creek Airpark preliminary plat subdivision, as submitted to the Board of County Commissioners on April 19, 2000, based on the findings of fact and subject to the following conditions, including the amendments presented today, the additional conditions presented today and the change to Condition 5 regarding the parks requirement, and the information provided by the Missoula City-County Health Department. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Rock Creek Airpark Conditions of Approval:

Roads

1. The subdivider shall file a document with the County Clerk and Recorder, establishing a private road maintenance agreement for that portion of Downwind Drive east of the cell phone site (approximately 650 feet east of the Rock Creek Interchange) to the easterly edge of the subdivision to ensure emergency access to Lots 2-11 of this subdivision. The road maintenance agreement shall be approved by the County Attorney and the Clinton Rural Fire Chief prior to final plat approval. *Subdivision Regulations Article 3-2 and OPG recommendation.*
2. The following statement shall appear on the face of the plat:

"Acceptance of a deed for a lot within this subdivision shall constitute the assent of the lot owner to waive the right to protest a future RSID for installation of public water, and sidewalks or pedestrian walkways along Downwind Drive, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land depicted herein." *Subdivision Regulations Article 3-2(5)(A) and 3-7(2).*

Fire

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

Weeds

4. The Covenants shall be amended as follows:

- A. Section 5.4 shall be amended to include the following sentence:
"Lots shall be maintained in compliance with the Montana Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan."
- B. Section 5.13 shall be amended so that the second sentence reads as follows:
"Native Montana vegetation and ground cover may be used in lieu of a seeded and mown lawn." Section 5.13 in the Rock Creek Airpark Development Agreement shall be identically amended.
- C. Section 5.27 shall be added to the Covenants, as follows:
"Construction. Dalmatian toadflax is present in this subdivision. All earth moving equipment shall be washed clean to prevent the movement of Dalmatian toadflax off site by seed or root parts." Section 5.27 shall be added to the Development Agreement as well. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*



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Airport

5. The airstrip and turnaround area shall be removed from the plat. *Subdivision Regulations Article 3-8(4) and County Attorney recommendation.*
6. The following statement shall appear on the face of the plat:

“Missoula County has not reviewed this subdivision for airport safety or the appropriateness of the runway for inclusion in the subdivision. Future lot owners accept all risk of living and/or being in close proximity to an airfield or the risk associated with use of the airfield. The developer and his successors will hold Missoula County harmless from any liability associated with the use of the airstrip.” *County Attorney recommendation.*
7. The following design standards shall be implemented to reduce visual impacts from this development and to preserve the scenic resources:
 - A. Section 6 of the Covenants shall be amended to state that hangars and adjacent residential buildings shall be constructed of non-reflective earth tone surfaces.
 - B. The subdivider shall submit a landscape plan to the Office of Planning and Grants for review and approval prior to final plat approval. The landscape plan shall show a vegetative buffer strip, consisting of 2” caliper or five-gallon rootball trees to be planted along the southern boundary of the property and shall include an installation and maintenance plan. Trees shall be planted an average of every 40 feet on center, with no fewer than two trees planted per lot frontage. *OPG recommendation and compliance with the 1975 Missoula County Comprehensive Plan.*

Wildlife

8. The Covenants shall include the following items related to minimizing potential wildlife conflicts:
 - A. Domestic pets are to be kept in a contained area to avoid wild animal harassment.
 - B. Pets shall be fed indoors and pet food shall be stored indoors.
 - C. Garbage shall be stored in well-sealed containers and inside storage units.
 - D. Permanent barbecue pits are prohibited. All portable barbecues shall be cleaned regularly and stored indoors when not in use.
 - E. Flowers, ornamental shrubs and fruit trees may be susceptible to damage from wildlife, therefore planting of native vegetation is encouraged.
 - F. All garden fences shall be constructed at least eight feet in height and one foot below the soil to prohibit animal intrusion, using a solid top rail on all fencing made of something other than wire to avoid animal entanglement.
 - G. Compost piles shall be enclosed in a container.
 - H. Apiaries may attract species such as bears and should be avoided. Before an apiary is located on a lot, the owner of the bee hive(s) should first contact the Department of Fish, Wildlife and Parks to discuss their plans and how best to avoid wildlife conflicts.
 - I. The brochure, “Living with Wildlife” shall be distributed to all lot owners.
 - J. The artificial feeding of wildlife is prohibited.

The Covenants shall be approved by OPG prior to final plat filing and recorded with the County Clerk and Recorder. *Missoula County Subdivision Regulations Article 3-1(1)(C) and Montana Department of Fish, Wildlife and Parks recommendation.*

Groundwater/Floodplain

9.
 - A. The Covenants shall be amended to state that residential dwellings and/or sewage treatment systems are not permitted. It shall also state that property owners must comply with Missoula County Floodplain Regulations and must apply to the Office of Planning and Grants for a Floodplain Development Permit before constructing any permanent structures.
 - B. The 100-year base flood elevation (BFE) according to FEMA shall be identified on the face of the plat, along with topographic contours of the site.
 - C. The Covenants shall be amended to include the following statement:

“This property is within the 100-year floodplain of the Clark Fork River, even though the Flood Insurance Rate Maps depict it as outside a flood hazard zone. The property lies three to four feet below the 100-year flood elevation, and could be threatened during a flood by surfacing groundwater and the river breaching the railroad berm. The railroad berm was neither constructed nor is it maintained as a flood control levee. Neither Missoula County nor Montana Rail Link guarantees that the railroad berm will prevent the river flood waters from entering this property.”

Covenants related to high groundwater, flooding, wildlife, fire standards or riparian areas shall not be amended or deleted without governing body approval. *Subdivision Regulations Article 3-1(2), 3-4 and 4-1(12); County Surveyor and OPG Floodplain Administrator recommendation.*
10. The covenants shall be revised to prohibit an aviation refueling station and/or the storage of large amounts of hazardous materials or aviation fuel on any lot within the subdivision. *Subdivision Regulations Article 3-1(2).*
11. The covenants shall be amended to include a statement that covenants related to weeds, wildlife, restrictions on septic systems, restrictions on residential uses, floodplain/groundwater hazards, storage/disposal of environmentally sensitive substances, road maintenance and landscaping shall not be amended without governing body approval. *Subdivision Regulations Article 4-1(12).*



Information provided by the Missoula City-County Health Department (via e-mail):

From: Peter Nielsen
To: Colleen Dowdall
Date: 5/2/00 12:04PM
Subject: Re: Rock Creek Air Park

In answer to your questions:

1. Will the use of the property as a maintenance shop for airplanes require a new septic permit or an upgraded system?

No. However, it is prohibited by the Missoula City-County Health Code, Regulation 1, Section I(A)(5) to install or use a sump, dry well, or septic system for disposal of waste fluids from the washing, servicing, maintenance or storage of any vehicle, equipment or components that are associated with an internal combustion engine, unless a permit is obtained from the U.S. Environmental Protection Agency. So, the repair facility would not be permitted to have a floor drain which would drain to the septic system or to a dry well. The repair facility could have a sink and a toilet, if the septic system is sized and permitted to accommodate those uses. But it is illegal to discharge any waste fluids or solvents from servicing airplanes down the sink or toilet and into the septic system.

2. What do the regulations require as restrictions for storage of hazardous materials in an area prone to flooding? Our condition permits "small amounts." Is that quantified somewhere?

The Health Department has no regulations that apply to storage of hazardous materials in that part of the County. The City's Aquifer Protection Ordinance does not apply beyond five miles from the City limits. State hazardous waste regulations would apply. These would regulate substances that are classified as hazardous, not including for example waste oil or citrus-based solvents. The quantities are specified in state regulations – only quantities above 220 pounds, or about 25 gallons of such substances as stoddard solvent are regulated. The regulations pertain primarily to the labeling, storage, transport and disposal of hazardous wastes.

Many repair facilities use the services of a company such as Safety Kleen to provide solvents in a self-contained parts washer. Safety Kleen provides periodic service of these parts washers to replenish clean solvent and transport used solvent off-site. Most parts washers contain only about 5 gallons or so of solvent, and thus are not regulated by state hazardous waste regulations.

If more than 25 gallons of a hazardous waste were stored at this facility, state regulations would apply. I find no reference in state regulations to storage in flood-prone areas.

If you have more detail on the types and quantities of potentially hazardous materials to be used and stored at the facility, I can provide advice on the specific regulations that may apply, if any. Based on the information you provided that only 5-10 gallons of a solvent may be stored and used, it would appear that no state or local regulations would apply. If the solvent was non-hazardous, that would be the case regardless of quantity.

>>>Colleen Dowdall 05/02/00 11:10AM>>>

Dear Peter,

Michael Kennedy posed 2 questions during Planning Status this morning on the Rock Creek Airpark. We are considering a new proposal that will not allow septic systems on any of the lots except for the existing system at the home of the developer. This proposal has evolved as the result of a survey that revealed that the area would be subject to flooding. The lots will be sold to individuals for the storage of airplanes. In other words airplane hangars. In addition, the developer/pilot is getting a mechanics license. He hopes to do some maintenance and repair work out of his existing hangar. I think that Ron Ewart may have talked to you about some of these details because of Michael Kennedy's concerns regarding the storage of hazardous materials. We currently have a condition that the covenants only allow storage of small amounts of chemicals or hazardous materials. I believe that the applicant is also aware of the types of materials that may be used that are more less biologically harmful and is agreeable to the use of these products. He thinks it is a good idea. He also thinks that he will have stored containers of 5-10 gallons at a time. Now the questions:

1. Will the use of the property as a maintenance shop for airplanes require a new septic permit or an upgraded system?

2. What do the regulations require as restrictions for storage of hazardous materials in an area prone to flooding? Our condition permits "small amounts." Is that quantified somewhere?

Peter, we are going back to the Commissioners with this on Wednesday – that is tomorrow. If you cannot get anything to us in writing, could you attend the public meeting or the Attorney/Commissioner meeting Wednesday morning. I look forward to your response.

colleen

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

**THURSDAY, MAY 4, 2000**

The Board of County Commissioners met in regular session; all three members were present. In the morning, Commissioners Carey and Evans attended the Missoula County Prayer Breakfast held at the University Ballroom.

ADMINISTRATIVE MEETING

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

Agreement – The Commissioners signed an agreement, entered into on May 4, 2000, between the Montana University System Employee Group Insurance Program (University System) and Missoula City-County Health Department. The purpose of the Agreement is to conduct osteoporosis screening for eligible employees and dependents of the Montana University System. Each screening shall be billed by the Missoula City-County Health Department at a rate not to exceed \$25.00 per person. The agreement was returned to the Missoula County Health Department for further signatures and handling.

Reappointments to County Park Board – The Commissioners confirmed via letters the following reappointments to the Missoula County Park Board:

1. Horace Brown – reappointment to a three-year term which will run until May of 2003.
2. Anne Rupkalvis - reappointment to a three-year term which will run until May of 2003.
3. Dan Morgan – reappointment to a one-year term as the “1st Alternate” which will run until May of 2001.
4. Dorothy N. Smith - reappointment to a one-year term as the “2nd Alternate” which will run until May of 2001.

Extension Request – The Commissioners signed a letter to Ron Ewart of Eli & Associates Incorporated, approving a 6-month extension of the final plat approval deadline for Deschamps Lane #2 Summary Subdivision, in accordance with the recommendation of the Office of Planning and Grants staff. This would make the new filing deadline November 19, 2000.

Other items included:

- 1) The Commissioners discussed the following:
 - (a) Impact Fees with Cindy Klette, Director of the Office of Planning & Grants; and
 - (b) Detention Center with Mike McMeekin of the Sheriff's Department.

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

FRIDAY, MAY 5, 2000

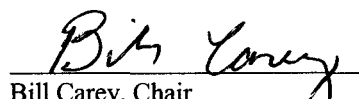
The Board of County Commissioners met in regular session; all three members were present in the forenoon. Commissioner Kennedy was out of the office all afternoon.

Election Canvass – In the forenoon, Commissioner Carey and Evans and County Auditor Susan Reed canvassed the Special Districts Election which was held on May 2, 2000.

Claims List -- Chairman Carey and Commissioner Evans signed the Claims List, dated May 4, 2000, batch numbers 627, 628, 634, (pages 1-8) with a grand total of \$91,548.41. The Claims List was returned to the Accounting Department.

Claims List -- Chairman Carey and Commissioner Evans signed the Claims List, dated May 4, 2000, batch number 632, (pages 1-3) with a grand total of \$21,183.94. The Claims List was returned to the Accounting Department.


Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chair
Board of County Commissioners

MONDAY, MAY 8, 2000

The Board of County Commissioners met in regular session; all three members were present in the forenoon. Commissioner Carey left at noon for Helena to attend the Special Legislative Session through Tuesday, May 9th.

Claims List -- Commissioners Evans and Kennedy signed the Claims List, dated May 8, 2000, batch number 641, (pages 1-2) with a grand total of \$476.45. The Claims List was returned to the Accounting Department.

Professional Services Contract – The Commissioners signed a contract between Missoula County, Missoula, and DLower Construction Incorporated to provide labor, materials, and equipment to remove existing partitions and demotion, building a new office for sheriff's office per drawings provided by Maintenance staff. The term will be February 13, 2000, and shall complete performance by April 1, 2000. The total amount shall not exceed \$4,317. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

Professional Services Contract – The Commissioners signed a contract between Missoula County, Missoula, and DLower Construction Incorporated to provide all materials and labor in order to install Coping caps on a purple house at 400 block, West Spruce. The term will be March 15, 2000, and shall complete performance by April 1, 2000. The total amount shall not exceed \$3,516.80. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

Police Memorial Flag - The Commissioners approved a request from Sheriff Chase to fly the Police Memorial Flag on Monday, May 15, 2000, in memory of those officers who have given their lives in performance of their duties.

TUESDAY, MAY 9, 2000

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

ADMINISTRATIVE MEETING

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

Agreement – The Commissioners signed an Agreement for Professional Security Services between the Missoula County Sheriff's Department and the Missoula Osprey Professional Baseball to provide security at the time and place specified for the period covering the 2000 baseball season – approximate dates are June 20, 2000 through September 30, 2000. The total amount shall be Seventy-Five Dollars (\$75.00) per officer lump sum for the first four hours from scheduled game start; therefore after, the amount of Twenty-Five Dollars (\$25.00) per hour, per officer, until game finishes.

Counter Offer – The Commissioners signed a Counter Offer pertaining to a Buy/Sell Agreement dated May 8, 2000 by and between The County of Missoula and Manookian Developers, Inc. concerning the property described as: Tracts 1, 2 and 3, COS 4440 in the West ½ of Section 8, T13N, R19W, P.M.M. Missoula County, Missoula (County Shops Property). The Total Purchase Price is Two Million One Hundred Thousand Dollars (\$2,100,000.00). The Counter Offer was returned to John Coffee at Lambros Realty for further handling.

Other items included:

- 1) Order For Payment - The Commissioners approved to pay the sum of \$5,684.30 from the general fund to Congdon Law Offices for services rendered in the Missoula Irrigation District Cases.
- 2) Order For Payment - The Commissioners approved to pay the sum of \$847.60 from the general fund to Geodata Services, Inc., for services rendered in the Missoula Irrigation District Cases.
- 3) Annexation – The Commissioners approved a request from Gary Turbak of Lower Linda Vista to annex Marilyn Park to the City of Missoula. In a letter to Mayor Mike Kadas and the City Council, dated May 9, 2000, the Commissioners urge the approval of the annexation.

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

WEDNESDAY, MAY 10, 2000

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Carey was out of the office all day due to illness.

Monthly Report – Acting Chairman Barbara Evans examined, approved, and ordered filed the Report of the Sheriff, Douglas W. Chase, Showing the Items of Fees and Other Collections on account of Civil Process Business in the County of Missoula, Montana, for the month ending April 28, 2000.

Payroll Transmittals – The Commissioners signed the following Payroll Transmittal Sheets:

- | | |
|----|--|
| 1) | Pay Period: 01 - Pay Date: January 14, 2000 - Total Missoula County Payroll: \$756,394.93 |
| 2) | Pay Period: 02 - Pay Date: January 28, 2000 - Total Missoula County Payroll: \$728,634.62 |
| 3) | Pay Period: 03 - Pay Date: February 11, 2000 - Total Missoula County Payroll: \$723,598.99 |
| 4) | Pay Period: 04 - Pay Date: February 25, 2000 - Total Missoula County Payroll: \$741,236.50 |
| 5) | Pay Period: 05 - Pay Date: March 10, 2000 - Total Missoula County Payroll: \$746,407.01 |
| 6) | Pay Period: 06 - Pay Date: March 24, 2000 - Total Missoula County Payroll: \$720,617.65 |
| 7) | Pay Period: 07 - Pay Date: April 7, 2000 - Total Missoula County Payroll: \$718,410.31 |
| 8) | Pay Period: 08 - Pay Date: April 21, 2000 - Total Missoula County Payroll: \$734,162.49 |
| 9) | Pay Period: 09 - Pay Date: May 5, 2000 - Total Missoula County Payroll: \$725,401.37 |

The Transmittal Sheets were returned to the Auditor's Office.

Land Buy-Sell Agreement - Commissioners Evans and Kennedy signed the Land Buy-Sell Agreement and the final modified Counter to Counter Offer by and between the County of Missoula, Montana (Seller) and Manookian Developers, Inc. (Buyer). This counter offer pertains to Buy-Sell Agreement dated May 8, 2000, concerning the property described as: Tracts 1, 2 and 3, COS 4440 in the West ½ of Section 8, T13N, R19W, P.M.M. Missoula County, Missoula (County Shops Property). The following terms and provisions modify the Agreement:

Lines 34 through 45 are amended to read:

Total Purchase Price is Two Million Forty Seven Thousand Five Hundred Dollars (\$2,047,500) payable as follows:

\$10,000 earnest money paid with this offer non-refundable after 60 day due diligence period and release of related contingencies.

\$20,000 additional non-refundable earnest money paid on or before July 8, 2000.

\$770,000 as additional cash paid at closing.

\$700,000 paid on or before February 9, 2002, interest free.

\$547,500 paid on or before August 9, 2003, interest free.

The \$10,000 non-refundable earnest money referred to above is hereby exempted from being returned to the Buyer as discussed on lines 7 and 48, 150, 153 and 154.

The date June 1, 2000 shall be added to line 77.

Resolution No. 2000-036 – Following the Public Meeting, Acting Chair Michael Kennedy signed Resolution No. 2000-036 entitled: "Resolution Relating to Financing of a Certain Proposed Project; Establishing Compliance with Reimbursement Bond Regulations Under the Internal Revenue Code". The reimbursement Resolution pertains to the \$233,000 Limited Obligation Bond (DNRC Revolving Loan Program), Series 2000, (Western Montana Fairgrounds Water Project).

PUBLIC MEETING – May 10, 2000

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Michael Kennedy. Also present were Commissioner Barbara Evans, County Surveyor Horace Brown, Deputy County Attorney Colleen Dowdall and Chief Civil Attorney Michael Sehestedt. Commissioner Bill Carey was out of the office.

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$113,208.80. Acting Chair Kennedy seconded the motion. The motion carried on a vote of 2-0.

Consideration and Adoption: Resolution Establishing Compliance with Reimbursement Bond Regulations (Fair Water System Project)

Michael Sehestedt stated this resolution relates to the financing of the proposed Fair Water System Improvements project, establishing compliance with reimbursement bond regulations under the Internal Revenue Code. Essentially, the purpose of this resolution is to comply with the final treasury regulations governing the use of proceeds of tax exempt bonds. Those regulations require the adoption of a statement of official intent to reimbursement an original expenditure not later than 60 days after payment of the original expenditure as it pertains to the Fair Water System project. The County sold a bond to cover the cost of certain improvements to the Fair water system. The purpose of this resolution is to use the proceeds of that tax exempt financing to reimbursement some expenses that had been incurred earlier.

Commissioner Evans moved that the Board of County Commissioners approve, and authorize the Chair to sign, the resolution that will establish compliance with reimbursement bond regulations for the Fair Water System Project. Acting Chair Kennedy seconded the motion. The motion carried on a vote of 2-0.

Hearing: George Jones Family Transfer – (Postponed from May 3, 2000)

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described in Tract 24 of COS 79-A.

George and Celeste Jones have submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 10 acres in size located off Fred's Lane. The applicants propose to create two five acre parcels; one for transfer to their son Jacob George Calvin Jones, and a remainder parcel.

The parcel was created on COS 79-A by use of the exemption available at that time – creation of a parcel greater than 10 acres in size.

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

George Jones was present and came forward to answer any questions the Commissioners might have.

Acting Chair Kennedy stated that the Family Transfer process allows a property owner to divide property without going through subdivision review. Under the law, the Commissioners are entitled to ask certain questions to determine if there is an attempt to evade subdivision review. He asked Mr. Jones if this was an attempt to evade subdivision review?

Commissioner Evans asked Mr. Jones if he fully intended to transfer this as indicated?

George Jones stated he did intend to transfer the property to his son as he indicated.

Acting Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by George and Celeste Jones to create a new parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Acting Chair Kennedy seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans told Mr. Jones that this process does not guarantee septic approval.

George Jones stated he understood that.

Acting Chair Kennedy stated Mr. Jones would receive a letter outlining the approval and what else may be required.

Hearing: Yang Family Transfer – WITHDRAWN PER PETITIONER’S REQUEST

Acting Chair Kennedy stated the Yang Family Transfer had been withdrawn.

Hearing: Jensen Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described in COS 4726, as Lot 5B.

Mark E. and Seana Jensen have submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 14-1/2 acres in size located between Huson and Ninemile on the Clark Fork River. The Jensens propose to create an approximately 5 acre parcel on the north portion of the property for transfer to Mark’s father, Wayne L. Jensen, retaining a 9-1/2 acre parcel.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Applicant	Intended Recipient
COS 3611 Creation of Lot 5	1986	Parcels greater than 20 acres	Western Financial Inc.	N/A
COS 4726 Creation of Lot 5A and Lot 5B	1997	Family Transfer	Mark Jensen	Seana Jensen

According to the records kept by the Missoula County Surveyor, the applicant has used the family transfer exemption to the Subdivision and Platting act as set forth above. Creation of these lots was for transfer to Seana Jensen so that a second house could be constructed for Seana’s parents.

Acting Chair Kennedy stated that the Jensens were not present and a decision on this request would be delayed to next week, May 17, 2000.

Hearing: Farmer Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described in COS 2484 as Tract B.

Delphine A. Farmer and Clifton Douglas Farmer have submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 20 acres in size located near Clinton off Donovan Creek Road. The applicants propose to create a parcel on the eastern portion of the property for transfer to Mrs. Farmer’s son, Daniel L. Field. His stated intent is to use the parcel for recreational purposes.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Applicant	Intended Recipient
COS 1148	1977	Parcels greater than 20 acres	Allen Leischner	N/A
COS 2484	1980	Boundary relocation	Farmers and neighbors	N/A

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

Clifton Farmer was present and came forward to answer any questions the Commissioners may have.

Acting Chair Kennedy stated the Commissioners were entitled to ask Mr. Farmer questions to determine that this is not an attempt to evade subdivision review. He asked Mr. Farmer if this was old railroad right-of-way.

Clifton Farmer stated he did not believe it was old right-of-way, it was a long, narrow piece of property.

Acting Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by Delphine and Clifton Farmer to create a new parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Acting Chair Kennedy seconded the motion. The motion carried on a vote of 2-0.

Consideration: Hellgate Pines Addition No. 1, Lot 15 – (2 lot subdivision) – Turah Area

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

Kelvin and Patty Nordwick, represented by Eli & Associates, have requested to create a 2 lot summary subdivision in the Turah area. The property is located about 10 miles outside of Missoula off Hellgate Lane, which branches off Turah Road. The original subdivision was called Hellgate Pines No. 1 and was filed in 1970, consisting of 24 lots. With further division of land, it now consists of 31 lots. This is a division of Lot 15. The property is just over 2.5 acres in size and each lot would be just over one acre each.

There is an existing home on Lot 15B and proposed Lot 15A is vacant. The property is level and scattered with pine trees. The Yellowstone Pipeline crosses the property from southeast to northwest. This division of land is consistent with the Comprehensive Plan designation for density, which is recommended at two dwelling units per acre.

Hellgate Lane is the primary access for this subdivision. It is in good condition and this proposal does require a variance for road and right-of-way width. Staff supports the variance request. There are two driveways to the existing home and according to the County Surveyors Office there has not been a final approach permit received for the first driveway and a second driveway was put in without filing papers for an approach permit at all. Staff is recommending a condition of approval, Condition 1, that the driveway approach permits for the existing residence on Lot 15B be obtained prior to final plat approval.

There are no sidewalks in the vicinity nor are any proposed. A variance request to this requirement has been made and staff supports the variance request. The plat does show an RSID waiver for future road improvements to Hellgate Lane, which could cover both the widening of the road or any other improvements, such as walkways or a bike path.

The lots are proposed to be served by individual wells and septic. The fire department had no issues with the proposed subdivision other than requesting the \$100 per new lot fire fee. In addition, staff recommends a condition that an RSID waiver for a public water system adequate for fire protection be included.

This lot is located in the vicinity of the Clark Fork River. It is outside the 100 year floodplain but there is sufficient ground water at non-peak periods to indicate that ground water is not far from the surface. Ground water would likely be higher during peak periods. In addition, soils are susceptible to ground water transfer and the course of the river in this area is fairly unstable. As a result, the Floodplain Administrator has requested a condition that no basement be built in the new home. In addition, staff has requested that a development covenant be filed that states that the subdivision has not been reviewed by the County to the extent that guarantees can be made about the potential for either high ground water on the property or for lateral flooding.

The Yellowstone Pipeline is located on the property and is shown on the plat within a 50 foot easement, 25 feet on each side of the centerline. Bruce Owens and Larry Ostwald of Yellowstone Pipeline recommended that in addition to this easement, primary dwelling structures should be set back from the centerline of the pipeline by 50 feet. Upon further discussion with them, they indicated that when YPL constructs a new pipeline, they are required to be a minimum of 50 feet from any primary dwelling structure, as well as certain other structures. As a result, Bruce Owens recommended that 50 feet be the setback for any primary dwelling structures in the vicinity of a pipeline.

Staff recommends approval of the two variances and recommends approval of the subdivision request based on the six conditions set forth in the staff report.

Ron Ewart, Eli & Associates, developer's representative, expressed appreciation to the Office of Planning and Grants for their work on this proposal. The developer is in agreement with the conditions of approval. Mr. and Mrs. Nordwick were present and would answer any questions the Commissioners may have. The area is a very nice big neighborhood. It is only about 15 minutes from Missoula. The homes are nice and the area is beautiful. The land is fairly level and the road is in good condition. It measures 22 to 24 feet in most places, however a variance for road width has been requested.

Acting Chair Kennedy asked for public comments.

Horace Brown stated that the road has been done with millings and it will be chip sealed sometime in the next two years.

Acting Chair Kennedy asked if the Surveyors Office would have any problems with the approach permits for access to Lot 15B.

Horace Brown stated there would not be a problem.

Acting Chair Kennedy stated he was concerned about having the setback requirement from the pipeline as a condition. It seemed like YPL was increasing their easement.

Colleen Dowdall stated there is a difference between the easement and the setback. YPL made a compelling argument that it would be best if the structures were set back 50 feet from the centerline of the easement. YPL has a right to gain access to the property within the 25 feet on either side of the centerline, which is an additional right not granted in the setback. She was not sure why the rules they operate under required structures be placed 50 feet from the pipeline, but it would better to be safe if it is a concern.

Commissioner Evans stated she had discussed this with Colleen Dowdall. There was an incident in Washington with the same type of pipeline in closer proximity to a structure. A stray spark caused an explosion which killed two children. Given that, and based on the fact that the developer and YPL are okay with these figures, she was willing to let it go from a safety standpoint.

Acting Chair Kennedy agreed with that. He pointed out that there is an assumption that the pipe is buried in the center of the easement and he doubted if that was correct. If the developer is agreeable to the request then the point does not need to be belabored.

Karen McElroy stated that she had the regulations that YPL referred to as to how they construct their pipelines. She re-emphasized it was only the primary dwelling that was restricted.

Acting Chair Kennedy stated the pipeline was built in the 1950s and the regulations presented were from 1981. However, it is a non-issue if the developer has accepted the setback.

There were no further public comments.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations to allow Hellgate Lane to vary from the required 24 foot road and 60 foot right-of-way widths to the existing condition; and approve the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision, both based on the findings of fact set forth in the staff report. Acting Chair Kennedy seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve the Hellgate Pines Addition No. 1, Lot 15, based on the findings of fact in the staff report and subject to the conditions in the staff report. Acting Chair Kennedy seconded the motion. The motion carried on a vote of 2-0.

Hellgate Pines Addition No. 1, Lot 15 Conditions of Approval:

Fire

1. The subdivider shall secure driveway approach permits for the existing residence on Lot 15B prior to final plat approval, subject to review and approval by County Surveyor. *County Surveyor recommendation, Subdivision Regulations Article 4-1(14).*
2. The developer shall contribute a \$100.00 per new lot fire fee prior to final plat approval. *Missoula Rural Fire District recommendation, Subdivision Regulations Article 3-7.*
3. The following statement shall appear on the face of the final plat and in all instruments of conveyance:

“Acceptance of a deed for a lot within this subdivision constitutes a waiver of the right to protest a future RSID/SID for public water system adequate for fire protection, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land.” *Subdivision Regulations Article 3-7(2).*

Utilities

4. The final plat shall show a 50 foot setback line from the centerline of the Yellowstone Pipeline easement, prohibiting primary dwelling units within the setback, subject to review and approval by OPG. *YPL recommendation, Subdivision Regulations Article 3-1(2).*

Weeds

5. A Revegetation Plan for Disturbed Sites shall be approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed Control recommendation.*

Covenants

6. A development covenant for this subdivision shall be filed with the Missoula County Clerk and Recorder's Office prior to final plat approval, subject to review and approval by OPG and the County Attorney's Office, and shall include the following items:
 - A. That property owners will comply with the Missoula County Noxious Weed Control Act and the Missoula County Noxious Weed Control Management Plan. *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed Control recommendation.*
 - B. That basements are prohibited in new dwelling units within this subdivision. *Staff recommendation and Subdivision Regulations Article 3-1(2).*

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- C. That this subdivision has not been reviewed by the County to the extent that guarantees can be made about the potential for either high ground water on the property or for lateral flooding. *Staff recommendation and Subdivision Regulations Article 3-1(2).*

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

THURSDAY, MAY 11, 2000

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

Claims List -- Commissioners Evans and Kennedy signed the Claims List, dated May 11, 2000, batch numbers 629, 630, 633, 635 and 638 (pages 1-18), with a grand total of \$364,572.07. The Claims List was returned to the Accounting Department.

Indemnity Bond -- Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Daniel B. Minton as principal for Warrant #259806, now unable to be found, issued May 5, 2000, on the Missoula County 1000-341 Fund in the amount of \$793.25.

ADMINISTRATIVE MEETING

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

Resolution No. 2000-037 -- The Commissioners signed Resolution No. 2000-037, permitting rezoning from C-A3 (Residential) to C-11 (Light Industrial) property legally described as Lot 8, Northgate Development Park, located in the Northeast ¼ and Southeast ¼ of Section 1, T13N, R20W, P.M.M., Missoula County, Montana.

Extension Request -- The Commissioners approved via letter to Gilbert Larson of DJ&A, PC, a 3-month extension of the final plat approval deadline for Woody Mountain Subdivision. The new filing deadline is July 29, 2000.

Reappointment -- The Commissioners approved the reappointment of Richard Ramberg to the Missoula Conservation District Board of Supervisors. A confirmation letter dated May 15, 2000 was sent to Mr. Ramberg.

Other items included:

- 1) The Commissioners approved Jerry and Denise Thrasher's shoreline permit request to install a floating dock on Salmon Lake and to construct a shoreline trail. The property is on Lot 2 of Salmon Lake Shores, Section 32, Township 16N, Range 14 W. Chairman Carey signed the Permit, and then it was returned to Brian Mairorano in the Office of Planning and Grants for further handling.
- 2) The Commissioners approved a Grant of "up to \$30,000" from the CDBG Program Income fund to assist in the expansion and remodel of the dining and kitchen facilities at the Poverello Center.
- 3) The Commissioners reviewed and approved the Review of the Missoula County Treasurer Wire Transfer Function for Fiscal Year 2000. The Audit Review was forwarded to the Clerk and Recorder for filing.

Discussion Items:

- 1) Deputy County Attorney Mike Sehestedt advised a public hearing on the proposal for an increase of Sheriff's Fees for Civil Process, aggregating other similar requests.
- 2) The Commissioners will ask the Judges for clarification regarding their memo.

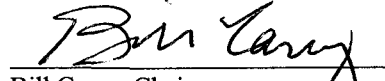
The minutes of the Administrative Meeting are on file in the Commissioners Office.

FRIDAY, MAY 12, 2000

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

Plat -- The Commissioners signed as Directors of Airport Industrial District the plat of Missoula Development Park, Phase 1, Block 2, Lots 4 & 5, an amended subdivision located in the NW ¼ of Section 35, T14N, R20W, P.M.M., Missoula County, a total area of 4.12 acres, with the owner of record being the Missoula County Airport Industrial District. The purpose of the survey is to relocate common boundaries and aggregate lots, with fewer than five lots affected, and no additional lots created.


Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chairman
Board of County Commissioners

MONDAY, MAY 15, 2000

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



Claims List – Chairman Carey and Commissioner Evans signed the Claims List, dated May 15, 2000, batch numbers 631 and 636 (pages 1-7), with a grand total of \$69,204.66. The Claims List was returned to the Accounting Department.

Claims List – Chairman Carey and Commissioner Evans signed the Claims List, dated May 15, 2000, batch number 646 (pages 1-2), with a grand total of \$4,781.04. The Claims List was returned to the Accounting Department.

TUESDAY, MAY 16, 2000

The Board of County Commissioners met in regular session; all three members were present in the forenoon. Commissioner Carey left at noon for Boise, Idaho, to attend a NACo Conference.

Claims List – Commissioners Evans and Kennedy signed the Claims List, dated May 16, 2000, batch number 645 (pages 1-3), with a grand total of \$6,187.38. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Contracts – The Commissioners signed two (2) Water Main Extension Contracts between Mountain Water Company and the Missoula County Airport Industrial District, extending the County portion of the water main to Phase 8, Missoula Development Park (Grizzly Auto Center) and to Kestrel Court and Kestrel Drive, Phase 1, Missoula Development Park. The total cost to extend the 12" water main to Kestrel Court and Kestrel Drive is \$30,250.00. The effective date of the contracts shall be May 8, 2000. The contracts were returned to Barbara Martens, Projects Coordinator, for further handling.

Resolution No. 2000-039– The Commissioners signed Resolution No. 2000-039, a budget amendment formally adopting as part of the Fiscal Year 2000 Operating Budget for Missoula County, Montana, the Sheriff's Office Expenditure for a Technology Grant (1000-300-447443-946) in the amount of \$718,000.00. The revenue amount is \$718,000.00; the description of revenue is 1000-300-333056.

Resolution No. 2000-038 – The Board of County Commissioners signed Resolution No. 2000-038, a Resolution of Intent to create RSID No. 8470 for construction of a paved roadway, known as Expressway Road from Butler Creek Road to DeSmet Road, Missoula County, setting the hearing date for June 7, 2000, at 1:30 p.m.

Other items included:

- 1) The Commissioners approved the Counter Offers, dated April 26, 2000, for B & J Properties, LLC, proposed by the Offer Review Committee of the Missoula Development Authority for Lots 3 and 13, Block 3, Missoula Development Park. The Offer Review Committee of the Missoula Development Authority recommended three counter offers:
 - 1) The offer be accepted with the amendment that the earnest money be increased by \$15,000 which will be non-refundable after the 120 day due diligence period. The new lot price will be \$245,475.00;
 - 2) The buyer agrees to transfer the purchase agreement to Lot 3, Block 3 and increase the earnest money by \$10,000 that will be non-refundable after the 120 day due diligence period. The net lot price will be \$249,000.00. The Missoula County Airport Industrial District agrees to a closing date of April 2, 2001.
 - 3) The buyer agrees to purchase Lot 3, Block 3, for the list price of \$239,000.00 and a closing date of August 18, 2000.

The Counter Offers were returned to Barb Martens in the Projects Office for further handling.

- 3) Acting Chair Barbara Evans signed a letter to Dr. Mark Baumler of the Montana Historical Society confirming that she is fully aware of the effects of listing a property in the National Register of Historic Places. Commissioner Evans also stated that, under the National Historic Preservation Act, she is entitled to comment on the proposed listings of properties within her jurisdiction. The proposed listing is *University Area Historic District*. Commissioner Evans then waived her right to comment on the proposed listing.

Discussion Items:

Lambert Tax Issue – The Commissioners approved Deputy County Attorney Mike Sehestedt's response to Susan Lambert.

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

WEDNESDAY, MAY 17, 2000

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Carey was in Boise, Idaho, attending the NACo WIR (Western Interstate Region) Conference through Friday, May 19th.

Claims List -- Commissioners Kennedy and Evans signed the Claims List, dated May 17, 2000, batch numbers 642, 643 and 644 (pages 1-8), with a grand total of \$101,298.27. The Claims List was returned to the Accounting Department.

Claims List -- Commissioners Kennedy and Evans signed the Claims List, dated May 16, 2000, batch numbers 648, and 649 (pages 1-13), with a grand total of \$197,471.77. The Claims List was returned to the Accounting Department.

PUBLIC MEETING – May 17, 2000

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Michael Kennedy. Also present were Commissioner Barbara Evans, County Surveyor Horace Brown, County Clerk & Recorder Vickie Zeier, Deputy County Attorney Colleen Dowdall and Chief Civil Attorney Michael Sehestedt. Commissioner Bill Carey was at a NACo Conference in Boise, ID.

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$743,515.19. Acting Chair Kennedy seconded the motion. The motion carried on a vote of 2-0.

Sale of Tax Deed Property: Second Public Auction

The second tax deed auction for the 1996 36-month delinquencies has been set for May 17, 2000. Attached to the request is a copy of the Notice of Sale of Tax Deed Land with the fair market value for each parcel as determined by Jim Fairbanks, Appraisal Office. No sale shall be made for a price less than the fair market value at the auction per M.C.A. 7-8-2301.

The Notice of Sale of Tax Deed Land was published in the Missoulian for two consecutive Sundays and posted in three places as required by M.C.A. 7-8-2302.

Michael Sehestedt, Chief Civil Attorney, presented a background on the second auction of Tax Deed Property.

The property for which taxes were delinquent for 1996 were sold to the County for taxes and the 36-month redemption period has expired. The County has advertised these properties for sale at auction at fair market price once. There were no bidders. Pursuant to statute, the Assessors office was asked to review and re-determine the fair market value. The properties are being offered for sale again at auction at fair market value.

The properties offered for sale:

<u>SUID #</u>	<u>LEGAL DESCRIPTION</u>	<u>FAIR MARKET VALUE</u>
3111000	BAY MEADOWS ADDITION as recorded in Book 14 of Plats at Page 84, now vacated by Missoula County Commissioners Resolution No. 92-051 recorded in Book 355 of Micro Records at Page 1453. LESS Spring Meadows Addition recorded in Book 17 of Plats at Page 72, Missoula County, Montana.	\$ 7,500.00
3297003	Lot 2 of RASER COMMERCIAL TRACTS NO. 1, a platted subdivision in Missoula County, Montana	\$ 103,672.00

The auction on SUID # 3111000, Bay Meadows Addition, was opened. As no bids on the property were received, the auction was declared closed.

The auction on SUID #3297003, Lot 2 of Raser Commercial Tracts No. 1, was opened. As no bids on the property were received, the auction was declared closed.

This auction has perfected the County's title to the properties. There are no longer any redemption or repurchase rights. The County owns the property, in fee simple, absolute. The County may negotiate a sale for the property. The minimum price for a negotiated sale is 70% of the fair market value. It can be held in inventory, can be utilized for any particular County purpose or sold or exchanged for value with other properties. The Internal Revenue Service (IRS) holds a lien on one of the parcels. Generally, at this point, the IRS would have the right to acquire the property from the County, they are in the position of a lienholder. If someone purchases the property from the County, the IRS may come in and pay the purchase price and take possession of the property. At this point, the County is in first place ahead of the IRS.

Hearing: Jensen Family Transfer – To be rescheduled for a later date

Acting Chair Kennedy announced that the Jensen Family Transfer had been rescheduled to a later date.

Hearing: Lockridge Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 2 of COS 3229, Section 22, Township 13 North, Range 16 West.

David and Laurel Lockridge have submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 17 acres in size located in Potomac off Blixit Creek Road. The Lockridges propose to create an approximately 2-1/2 acre parcel on the eastern portion of the property for transfer to their daughter, Tina I. Harris.

They own approximately 22 acres in the Potomac area. Previously, the Lockridges created a parcel of approximately 5 acres by use of the Mortgage Exemption. That parcel is still in existence and is still in the name of the Lockridges and was used for the purpose for which it was intended. There was a trust indenture placed on the property.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Applicant	Intended Recipient
Lot 2, COS 3229	1985	Over 20 Acres	Wills	N/A
Lot 2A, COS 3939, approximately 5 acres in size	1991	Mortgage Exemption	Lockridge	N/A

According to the records kept by the Missoula County Surveyor, the applicant has used the exemptions to the Subdivision and Platting Act as set forth above.

David Lockridge was present and came forward to answer any questions the Commissioner may have.

Acting Chair Kennedy stated that the Family Transfer process allows a property owner to divide property without going through subdivision review. Under the law, the Commissioners are entitled to ask certain questions to determine if there is an attempt to evade subdivision review. He asked Mr. Lockridge if he did intend to transfer this portion of the property to Tina I. Harris?

David Lockridge stated that was his intention.

Acting Chair Kennedy opened the Public Hearing. There being no comments, the Public Hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by David and Laurel Lockridge to create a new parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Acting Chair Kennedy seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans stated that the approval of the family transfer did not grant approval of a septic system or other permits that may be necessary. That was a separate process. It also did not mean the County would put in a road. Mr. Lockridge would receive a letter of approval outlining what else may be necessary.

Hearing: King Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described in Book 488, Page 1546, and located in Section 19, Township 14 North, Range 22 West.

Jay D. King and Winona Cheatham King have submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 300 acres in size located near Alberton off Petty Creek Road. The Kings propose to create an approximately 20 acre parcel on the northwest portion of the property for transfer to their daughter, Dusty Rice.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Applicant	Intended Recipient
Warranty Deed from Crown Pacific to Kings	1996	Over 20 Acres	N/A	N/A

According to the records kept by the Missoula County Surveyor, the applicant has not used the exemptions to the Subdivision and Platting Act except for a mortgage exemption that was approved by the County Attorneys Office on March 29, 2000.

Jay King was present and came forward to answer any questions the Commissioners may have. He stated that he wished to transfer 40 acres to his daughter, not 20 acres as noted by Colleen Dowdall.

Acting Chair Kennedy stated that the Family Transfer process allows a property owner to divide property without going through subdivision review. Under the law, the Commissioners are entitled to ask certain questions to determine if there is an attempt to evade subdivision review. He had no questions.

Commissioner Evans stated that the approval of the family transfer did not grant approval of a septic system or other permits that may be necessary. That was a separate process. It also did not mean the County would do anything on Petty Creek Road. Mr. King would receive a letter of approval outlining what else may be necessary.

Acting Chair Kennedy opened the Public Hearing. There being no comments, the Public Hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by Jay D. King and Winona Cheatham King to create a new parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Acting Chair Kennedy seconded the motion. The motion carried on a vote of 2-0.

Hearing: McAfee Subdivision and Planned Variation – (20 lots) – Off Grove Street

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

Steve McAfee, represented by D J & A, has proposed a 20 lot subdivision on 5.39 acres east of Grove Street and 1/4 mile north of South Third West. The property is currently located in the County. Annexation to the City is likely after connection to City sewer service. It is zoned C-RR3 (Residential), which allows a maximum residential density of four dwelling units per acre and the applicant's proposed Planned Variation to supplement the existing zoning. Planned variations are allowed to permit innovative approaches to housing and environmental design and can allow up to a 10% density increase, 50% minimum lot size decrease, 50% front and rear setback decrease, side setback changes and reduction in lot width. The Planned Variation standards include no density increase but do allow for lot size reduction of up to 50%, front and rear yard setback reductions of approximately 50%, side yard setback reductions to 2-1/2 feet and lot width reduction of 60%. Staff has recommended a provision for landscaping of boulevard areas along the streets to mitigate the visual impacts of the development within the subdivision. This would also make it consistent with City boulevard landscaping standards. There are some conditions related to Planned Variation approval that relate to landscaping.

Steve King, the City Engineer, recommended that garages be set back at least 20 feet from the sidewalk to insure pedestrian access. This recommendation is included in the Planned Variation standards. There is an additional portion of the Planned Variation Standards that relates to Lot 5. Lot 5 has a long, narrow area for vehicular access and connection to the street. The Planned Variation Standard clarifies how the setback for that lot would be defined.

The 1998 Missoula Urban Comprehensive Plan recommends urban residential land use with a density of four dwelling units per acre and the proposed density is about 3.7 dwelling units per acre. The 1980 County Reserve Street Plan also apply to the property. The property is accessed from Grove Street, which is County maintained within a 60 foot public right-of-way. Right now, the street is paved to about a 22-23 foot width. Condition 3 requires the waiver of the right to protest an RSID for future improvements to Grove Street. Staff is also recommending approval of a variance request from a requirement to do any improvements on Grove Street at this time.

The property is fairly level on the eastern portion, then it drops to a lower terrace. There is an irrigation ditch running through generally the southern portion of the property which mostly functions as a over-flow from the northern part of the irrigation system. There is no use of the ditch proposed by the subdivision and there are a couple of conditions related to the irrigation ditch easement.

The applicant proposes two new cul-de-sacs, Street "A" that exits off Grove Street, and Street "B" that comes off of Street "A" that would serve the interior of the subdivision. County and City staff and the applicant had extensive discussions about how these new roads would fit in with future development in the area. There is a recommended condition that requires an additional 40 foot easement at the end of Street "B" that would provide for a possible future connection to the north if development were to occur there. That right-of-way is conditional, dependant upon annexation, since the County cannot restrict vehicular access on rights-of-way.

There was some discussion at Planning Board about a narrow road width. The City Engineer recommended that the 32 foot width be retained as it would be preferred. The applicant has proposed to install boulevard sidewalks along Street "A" and Street "B." They also proposed a pedestrian easement between Lots 16 and 17. That could connect to the former Old Milwaukee right-of-way, the possible location of a future trail. That walkway easement would be included within the conditional right-of-way. There is also a trail through the common area proposed along the irrigation ditch. Since the County cannot have rights-of-way exclusively for pedestrian use, there is a conditional easement along that trail, pending annexation to the City.

The applicant proposes to connect to City sewer and a community water system would be used until Mountain Water service is available. Condition 8 requires an RSID waiver for future connection to that system. Condition 9 requires payment of \$100 per new lot into the large diameter hose fund of the Missoula Rural Fire District.

The parks and open space dedication requirement for this size property would be .31 acres and the applicants have proposed 1.44 acres of common area which would be maintained by the homeowners association, far exceeding the area requirement. That common area would be located along the irrigation ditch and along the perimeter of the subdivision. There are some recommended conditions of approval that relate to weed control and trail maintenance. The ditch along the property is lined with riparian vegetation and there is a proposed riparian management plan

included with application. Staff has recommended some additions to the plan, as well as some replanting that would occur in the riparian area. Some trees would be lost where the street crosses the irrigation ditch.

The western portion of the property is fairly level. There is a grove of cottonwood trees in the area of Lots 16 and 17. Staff has recommended that these be preserved to the maximum extent possible. That is the developers intention.

The property is located east of the Clark Fork River and is about two feet above the floodplain. The applicant is conducting high ground water testing on the site. Brian Maiorano, Floodplain Administrator, has made some recommendations with respect to basements and crawlspaces.

The plat includes some utility easement in the common area. Condition 18 requires that easement be either specified or eliminated on the final plat. OPG received two written comments from nearby property owners on the proposal, who had concerns about density, change in rural character, impacts to wildlife, impacts to view and impacts to schools.

The Planning Board held a hearing on this proposal on May 2, 2000, and recommended approval of the Planned Variation, the variance request and the subdivision. Based on discussions at Planning Status on Monday, May 15, 2000, some possible changes to conditions of approval and Planned Variation Standards were presented. One has to do with setbacks for front yards on Lots 13-17. County Surveyor Horace Brown recommended that if there is a requirement for the potential through connection right-of-way that the cul-de-sac be shown as temporary. The applicant has requested that the setbacks for those lots be measured from the cul-de-sac and staff concurs. The applicant has also requested a slight change in wording on Condition 2 related to the construction of a future roadway. On Condition 6 which relates to indemnification and the floodplain and groundwater, there is some language that allows the indemnification language be subject to the approval of the County Attorneys Office so there is some flexibility in the final wording. It also separates out the portion of that condition that relates to errors and omissions in insurance by making it Part D. On Condition 7, which relates to basements and floodplains, Planning Board had recommended, per the applicants request, to clarify that basements would not be permitted on Lots 6 through 20, but they might be allowed on Lots 1 through 5. After some discussion with the Floodplain Administrator, there is some additional language that better defines when and how crawl spaces might be allowed.

Daniel Summerfield, D J & A, developer's representative, was present, as was the developer Steve McAfee. He thanked Nancy Heil and staff for their work on this project. He also thanked the Commissioners for their consideration of the proposal. The McAfee Subdivision is proposed as a 20 lot subdivision on 5.4 acres \pm , west of Grove Street and 1/4 mile north of South Third West and Reserve. The property is zoned C-RR3, which allows a density of four units per acre and the 1998 Missoula Comprehensive Plan also recommends four units per acre for this area. With this project, a Planned Variation is being proposed which would allow reduced lot sizes, widths and setbacks, but no increase in density on the site is being proposed. The proposal is below the allowed density, approximately 3.7 units per acres. By proposing smaller lots in a clustered development, it provides 4.6 times the required open space or park dedication, or 1.44 acres of open space. The open space in this case will serve to protect an existing riparian area along the irrigation overflow ditch. It will protect existing trees and provide somewhat of a buffer between adjacent properties. It will also allow the construction of two proposed trails, one that could possible connect to the Old Milwaukee railroad right-of-way, should it ever be developed into a trail network, and also a trail connection to the south, should adjacent properties ever develop. It also provides residents access to the open space areas. A variance is being requested for the improvements to Grove Street. Currently, the property borders about 140 feet of Grove Street and the developer feels it is not warranted at this time to improve that short section of Grove Street. The street is much longer than this frontage. The proposal is to include a statement on the plat that would waive the right to protest an RSID/SID for future lot owners. The changes in the language that Nancy Heil provided today have full agreement with the developer. He presented a booklet on the McAfee Subdivision. The aerial photo shows the location of the irrigation ditch and the existing trees. Only about 7 to 10 trees in this area will be removed for road construction. The grove of trees at the north is also visible, and most of those will be preserved as well. The photos in the packet show where the trail to the south is to be constructed, the riparian area where the road is proposed and a general view of the lower lying area. The last photo is conceptual of what the subdivision may look like, with boulevard trees, close spacing, small lots and two story homes. The Planning Board supports this proposal.

Acting Chair Kennedy opened the Public Hearing.

Don Stinger, 245 North Davis Street, stated he was speaking as a representative of the Neighborhood Network. Mr. McAfee and his agent contacted him and provided him with a tour of the property. This proposal is immediately north of the Orchard Homes County Life Club clubhouse. The Orchard Homes County Life Club area extends from the edge of the Champion property west to the confluence of the rivers. Since annexation, about half the area is in the City and half is in the County and there is a great deal of development in both areas. Mr. McAfee explained what he was proposing to do. A lot of the people were not aware of the current zoning. He has more than satisfied the zoning and has agreed to the changes at the recommendation of staff and the Floodplain Administrator. The officers in the Orchard Homes Ditch Company are satisfied and have agreed to the easement along the ditch and the assessments to be paid. Mr. McAfee has tried his best to satisfy all the concerns and he saw no reason not to approve the subdivision. His one concern was the long driveway to Lot 5, but the agencies commenting felt it would not be a problem.

Teresa Emery stated she felt the opposite of the previous speaker about this cluster subdivision going into her neighborhood. Her family owns two 5 acre parcels adjacent to this proposal, to the south and west. One of her concerns was the common area and irrigation ditch. She spoke with Marvin Ross, the Irrigation District President, who told her this is not part of the irrigation ditch where the future proposed trail is located. It is the run off and flows to her property in the lower field. She would like it noted for the record that this is not considered part of the irrigation ditch and has not been maintained by the irrigation company in the 40 years her relatives have lived there. The runoff flows to the south and west onto private property. She wanted to know if the developer could get an easement in the future.



Her family would not grant such an easement. If this is not the irrigation ditch, how could this be considered for a future trailway for this cluster subdivision and its occupants.

Commissioner Evans stated the developer can't dedicate anything that is not on their land.

Teresa Emery stated that part of the common area was part of her property. There is water in the area but is known as the slough. It has never been maintained as part of the irrigation ditch.

Commissioner Evans stated nothing on Mrs. Emery's property can be dedicated. There are maps that show all the ditches in the County.

Nancy Heil stated that the portion of the property shown as common area is only on the McAfee Subdivision. That is the boundary. There would be nothing outside of the applicant's ownership that would be dedicated as common area or have any sort of a trail on it.

Teresa Emery asked where the proposed trail would go?

Nancy Heil stated it would not go anywhere right now. If the Emery property never changed hands and there was never any future development on the property, then the trail would never go anywhere. Staff looks at the possibility of a future through connection, such as to the Old Milwaukee right-of-way to the north. The Old Milwaukee right-of-way is currently in private ownership but has been identified in various planning documents as a desirable location for a walkway in the future. Right now there is a walkway easement shown on this subdivision, but if there is nothing for it to connect to, then it wouldn't happen. When staff looks at a proposal, they have to look at not only what is happening in the short term, but what may happen in the future. That why there are provisions for future road connections. Staff has to look toward what kind and type and density of development would be allowed to happen in the future. Nothing is being required of the Emery property right now.

Commissioner Evans stated that if it involved Mrs. Emery's property, this developer could not do anything with it.

Nancy Heil stated that the ditch easement and the walkway easement are two separate things. In discussions with Marvin Ross, he indicated that what existed on the Emery property was an overflow or feeder from the main part of the irrigation system.

Commissioner Evans told Mrs. Emery that the developer cannot give an easement on her land, no matter what kind of easement, pedestrian, irrigation, etc.

Acting Chair Kennedy stated that the walkway easement could not go on top of the irrigation ditch easement without the ditch company agreeing to it. It has to go in a separate place.

Commissioner Evans asked for some discussion about the layout of the subdivision and what it will mean for the wildlife in the area.

Steve McAfee stated he purchased this property about 20 years for his dad to keep horses on. The County has grown up around the property and it is not suitable to keep it in its present state. Horses were kept on the land for many years. He has a very deep emotional tie to the property. When he began this process he spent a lot of time with OPG on how to incorporate this and make it the best possible subdivision. It went through a number of different layouts and designs and phases. The trail was OPG's recommendation. He had always planned to keep all of the trees. This layout was designed to keep the wildlife corridors open. The river and river channels are to the west and north. There is abundant wildlife in the area. The plan was to allow the homes to be clustered around the cul-de-sacs with minimal impact on the surrounding neighborhood. The planners at D J & A have done a great job with creating this final plan. They have worked with the City and County to make this proposal a possible model for future development in this area. He has spoken with the Emerys and others who were concerned with the proposed walkway coming to the edge of their property. There might be another location for the walkway. He felt the impact to the adjacent properties and the wildlife would be minimal.

Commissioner Evans stated that it has been found over a period of years that maintaining and protecting wildlife can be done if homes are clustered closer together to leave more open space. That is what they wanted to achieve in this subdivision, allowing someone the use of their land and still provide protection for wildlife. She assured Mrs. Emery again that no one can do anything on her property that she does not agree with.

Teresa Emery stated she felt she understood a little bit more why this clustered development was wanted but she still felt it didn't fit in with the area. Most homes out there are on 1 to 5 acre parcels.

Acting Chair Kennedy stated that the area was zoned at the 4 units per acre density although it had not been developed to that density. Target Range was zoned in about 1977 at 2 units per acre but the density currently is substantially less than that. People get used to the lower density but the zoning was adopted with the residents' permission. To have an area rezoned for lower density once it has already been zoned is a very difficult process and probably would not happen. The underlying density will ultimately be achieved in certain areas. The question then becomes how it can be developed while still maintaining the rural atmosphere. This particular proposal achieves that by retaining a certain amount of open space and clustering the homes.

There being no further comments, the Public Hearing was closed.

Horace Brown stated the streets need to be named on the final plat. Also, if the open area is going to be known as common area, it will need to be owned and maintained by the people who live there. That should be made clear on the



plat. His last concern was leaving 40 feet for future access, if all the amenities of a street are wanted, the width should not be under 54 feet.

Acting Chair Kennedy stated that the street width was discussed with City engineering and the width was agreed to.

Nancy Heil stated Condition 4 requires that the street names be approved by the Surveyors Office prior to plat filing. Also, the final plat will state that the open area is dedicated common area to be maintained by the Homeowners Association, and the covenants will reflect that. The possible future street connection width was suggested by Steve King and was acceptable to all parties.

Horace Brown stated that if sidewalks and curb and gutter were added, it would be outside the right-of-way.

Acting Chair Kennedy stated that Horace Brown's point was valid. It requires at least 50 feet of right-of-way to provide all the amenities of a street. However, this is a very short connect to a possible future street system to the north, should it ever be developed. The 40 foot width does not take away too much from the developer and still provides a possible future connection and is acceptable to the City.

Commissioner Evans stated she did not like the County being a party to the covenants, as noted in the report. She would like a clarification.

Nancy Heil stated the reference does not make the Commission a party to the covenants. It means that the Homeowners Association could not change or delete a riparian management plan, for instance, from the covenants without the Board's approval. The statement only pertains to very specific parts of the covenants, not all the covenants. Staff has been very careful about only requiring that the governing body review changes to covenants on issues that are of interest to the County.

Colleen Dowdall stated that governing body approval of covenants has been narrowed significantly to those issues that are critical to the County. She was satisfied that the County would not be involved with trivial matters.

Commissioner Evans moved that the Board of County Commissioners approve the McAfee Planned Variation, based on the findings of fact in the staff report and subject to the conditions in the staff report and the amended Planned Variation Standard as presented at the meeting today that setbacks for front yards for Lots 13-17 shall be measured from the temporary cul-de-sac easement line. Acting Chair Kennedy seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2 of the Missoula County Subdivision Regulations for road width, curb and gutter, and sidewalks on Grove Street, based on the findings of fact set forth in the staff report. Acting Chair Kennedy seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve the McAfee Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report and the amendments to those conditions as presented at the meeting today. Acting Chair Kennedy seconded the motion. The motion carried on a vote of 2-0.

McAfee Planned Variation Conditions of Approval:

1. Boulevard landscaping on non-lot street frontage shall be installed or guaranteed prior to final plat approval. The boulevard landscaping plan shall be approved by OPG prior to final plat approval. *Staff recommendation.*
2. The covenants shall be amended to provide a means for maintenance of boulevard landscaping on non-lot street frontage, subject to OPG review and approval, prior to final plat approval. *Staff recommendation.*

McAfee Subdivision Conditions of Approval:

1. The Planned Variation shall be approved prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B).*

Roads

2. A 40 foot conditional public access easement shall be dedicated extending Street B to the north and shall be shown on the final plat. The location of the easement shall be approved by the County Surveyor and OPG. The cul-de-sac bulb shall be shown as temporary on the plat. The following statement shall be included on the plat and refer to the conditional public access and utility easement:

"The owners dedicate a 40 foot right-of-way for purposes of a public roadway, as shown on the subdivision plat, conditioned upon said right-of-way being used as a roadway at the time that it is needed to serve future subdivision to the north. The lot owners and future owners of lots in McAfee Subdivision will not be responsible for the construction of the future roadway. Further, no motorized public access of any type will be allowed across the easement until the area shown as conditional public easement is opened for motorized public access, as required by the governing body. The owners dedicate a 20 foot public walkway easement within the 40 foot easement conditional upon the property begin annexed into the City of Missoula." *Subdivision Regulations Article 3-2(1) and County Surveyor, City Engineer and OPG recommendation.*

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



“Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for improvements to Grove Street, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land.” *Subdivision Regulations Article 3-2 and County Surveyor recommendation.*

4. Names for streets within the subdivision shall be approved by the County Surveyor prior to plat filing. Road engineering plans and specifications for improvements within the subdivision shall be approved by the County Surveyor's Office prior to final plat approval. The culvert across the ditch shall be reviewed by the Orchard Homes Irrigation Ditch Company prior to final plat approval. *Subdivision Regulations Article 3-2(1-6,8) and County Surveyor recommendation.*
5. a. The trail within the common area shall be located within a 20 foot conditional public walkway easement in a location to be approved by OPG and the City Parks and Recreation Department. The following statement shall be included on the plat and refer to the conditional public access easement:

“The owners dedicate a 20 foot public walkway easement, as shown on the subdivision plat, conditioned upon the property being annexed into the City of Missoula.” *Subdivision Regulations Article 3-2(5), 3-6 and staff recommendation.*
- b. Trail plans shall be reviewed by the City Parks and Recreation Department prior to final plat approval. *Subdivision Regulations Article 3-2(5) and Parks and Recreation Department recommendation.*

Drainage/Floodplain/Groundwater

6. a. Grading, drainage, and erosion control plans shall be reviewed by the City Engineer and approved by the County Surveyor prior to final plat approval. *Subdivision Regulations Article 3-4, 4-1(12).*
- b. The plat shall include a certification by the consulting engineer that the drainage design will effectively retain any additional drainage that results from the subdivision on site or release it a manner that will not substantially increase the peak run-off normally present before the subdivision. *Subdivision Regulations Article 3-4 and County Attorney recommendation.*
- c. Any engineer's certification called for in this approval shall include an indemnification of Missoula County for any damages that may result to landowners, homeowners or public infrastructure as the result of a claim against Missoula County for approval of this subdivision based upon the engineer's certification. The language of the indemnity is subject to the approval of the County Attorney's Office. *Subdivision Regulations 3-1(2) and County Attorney recommendation.*
- d. The engineer shall also provide evidence of coverage by errors and omissions insurance prior to plat filing. *Subdivision Regulations 3-1(2) and County Attorney recommendation.*
7. a. The lowest floor shall be located 2 feet above the 100 year flood elevation. Basements are not permitted on Lots 6-20. Basements on Lots 1-5 may be permitted subject to Floodplain Administrator approval. Crawlspace floors are not permitted below floodplain elevation. If the crawlspace contains mechanicals, the crawlspace floor must be located 2 feet above flood elevation. The covenants shall be amended to include this requirement prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B), 3-1(2), 4-1(12) and Floodplain Administrator recommendation.*
- b. The covenants shall be amended prior to final plat approval to state:

“The property is near a designated floodplain. The County has not reviewed the subdivision to the extent that guarantees can be made about the potential for either high groundwater or surfacing high groundwater on the property.” *Subdivision Regulations Article 3-1(2), 4-1(12) and County Attorney recommendation.*

Fire, Water and Sewer Services

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

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

9. The developer shall contribute \$100.00 per new lot to the Missoula Rural Fire District prior to plat filing. *Subdivision Regulations Article 3-7(1) and Missoula Rural Fire District recommendation.*
10. Sewer plans for the subdivision shall be approved by the City Engineer prior to final plat approval. *Subdivision Regulations Article 3-7 and City Engineer Recommendation.*

Wildlife

11. The covenants shall be amended to state that homeowners accept responsibility of living with wildlife and will be responsible for protection of their vegetation from damage, confinement of pets, and proper storage of garbage and other attractants. The covenants shall be amended to include specific “Living with Wildlife” recommendations,



subject to OPG approval prior to final plat approval. *Subdivision Regulations Article 4-1(12) and Montana Fish, Wildlife, and Parks recommendation.*

Weeds

12. A Revegetation Plan for Disturbed Sites shall be approved by the Missoula County Weed Board prior to plat filing. The riparian management plan and the covenants shall be amended to require compliance with the Montana County Noxious Weed Management Act and the Missoula County Noxious Weed Management Plan. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*

Irrigation Ditch

13. The final plat shall show an easement 10 feet on either side of the irrigation ditch located on the property. *MCA 76-3-504(10), Subdivision Regulations Article 3-6, and Ditch Company recommendation.*
14. The covenants shall be amended prior to final plat approval to include notification that the land is classified as irrigated and may continue to be assessed for irrigation water delivery even though the water may not be deliverable. *MCA 76-3-504 (9) and Subdivision Regulations Article 4-1(12).*

Riparian Area

15. The riparian management plan shall be amended, subject to OPG approval prior to final plat approval, to include a more detailed description of the vegetation; an attachment showing the boundaries of the riparian area; permitted or prohibited uses in the riparian area such as motorized vehicles or grazing; specific maintenance activities such as weed control methods or vegetation removal; and construction practices to minimize impacts to riparian vegetation. The plan shall also include a mitigation plan for the loss of trees during road construction to include a description of the species, number, and size of trees to be removed; the species, number and location of trees to be planted; maintenance of the planted trees; and monitoring of their survival. The covenants shall be amended to include the riparian management plan. *Subdivision Regulations Article 3-13 and 4-1(12) and staff recommendation.*

Common Area

16. The covenants shall be amended to include provision for weed control, trail maintenance, and other maintenance activities in the common area. The covenants shall be amended to include a statement that covenants related to weeds, wildlife, riparian areas, or groundwater shall not be amended without governing body approval. *Subdivision Regulations Article 3-8 and staff recommendation.*
17. A development agreement shall state that the developer shall provide noxious weed control and litter removal in the common area until the homeowner's association accepts maintenance responsibility. The development agreement shall be filed prior to final plat approval, subject to County Attorney's Office approval. *Subdivision Regulations Article 3-8 and staff recommendation.*

Utilities

18. The common area utility easement shall either be specified or eliminated on the final plat. *Subdivision Regulations Article 3-6.*

Other Business

Bill Dahlgren, 2008 37th Avenue, President of the Big Sky Park Stewardship Committee, stated he had a concern about a news report regarding the park that had been on the news the night before. He was unaware there might be some controversy surrounding the use of the park. He was present today to find out what is going on and what the Stewardship Committee could do to help.

Acting Chair Kennedy stated he did not believe there was any controversy. There was a question about the stewardship of the land. No decision on use has been made.

Commissioner Evans stated that the Public Meeting should be adjourned. The Board would speak with Mr. Dahlgren about the park situation, but it did not need to be part of the Public Meeting agenda.

There being no further business to come before the Board, the Commissioners were in recess at 2:30 p.m.

THURSDAY, MAY 18, 2000

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

Claims List -- Commissioners Evans and Kennedy signed the Claims List, dated May 18, 2000, batch number 650 (pages 1-3), with a grand total of \$6,766.87. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Resolution -- The Commissioners signed Resolution No. 2000-040 to approve a planned variation for property described as McAfee Subdivision, located in NE 1/4 Section 19, Township 13 North, Range 19 West, P.M.M.

Contract - The Commissioners signed a contract entered into May 1, 2000, by and between Missoula County and Robert Skiles dba Clearwater Towing, 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. Bid price per load for pick ups and preparation in accordance with this contract in the proposed area is (flat rate) \$50.00 per load. This Contract shall be in effect from the date of award and shall stay in effect until terminated by either party. The Contract was returned to the Health Department for further signatures and handling.

Professional Services Contract - The Commissioners signed a Professional Services Contract between Partnership Health Center and Tim Burke, M.D. Dr. Burke, OB GYN, has volunteered on site for several years for one afternoon per month, performing colposcopy procedures, which often result in the need for LEEP (loop electrosurgical excision procedure) to be done. Because the LEEP is an evasive procedure, we have agreed to pay Dr. Burke \$100 for each LEEP completed. This is a very much needed service for patients as it aids in the early detection of cancer. The patients will be billed for this procedure. The term will be May 10, 2000 through June 20, 2001.

Professional Services Contract - The Commissioners signed a Professional Services Contract by and between Missoula County and Frank Mitchell, Principal Contractor of Mitchell Painting Service, to paint nine offices and hall in the Sheriff's Office. The amount shall not exceed \$760.00. The term will be April 15, 2000 through April 30, 2000. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

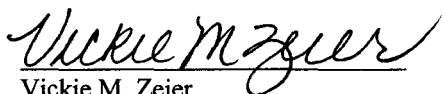
Other items included:


- 1) The Commissioners approved a motion to provide the Lalonde ranch for the new animal control facilities. The final decision is contingent on a final plan to be approved by the Board of County Commissioners and the Missoula Development Authority.

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

FRIDAY, MAY 19, 2000

The Board of County Commissioners did not meet in regular session. In the forenoon, Commissioner Evans took the Montana Rail Link trip to the Bitterroot, and Commissioner Kennedy was in Potomac meeting with area residents regarding road issues. Commissioner Evans was out of the office all afternoon.


Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chairman
Board of County Commissioners

MONDAY, MAY 22, 2000

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

Indemnity Bond -- Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Carla Carter as principal for Warrant #25521, now unable to be found, issued April 10, 2000 on the Missoula County Hellgate High School Student Fund in the amount of \$100.00.

Indemnity Bond -- Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Judith Fecko as principal for Warrant #112897, now unable to be found, issued May 1, 2000 on the Missoula County Trust Fund in the amount of \$200.00.

Plat and Improvements Agreement -- The Commissioners signed the Plat for Northgate Development Park, a subdivision located in the W 1/2 of Section 6, T13N., R19W., and the E 1/2 of Section 1, T13N, R20W P.M.M., Missoula County, a total area of 32.85 acres, with the owners of record being C & C Land, LLC. The Commissioners approved an Agreement with C & C Land, LLC, for the improvements which remain to be completed, the Construction of Majestic Drive. The total amount is Seventy-One Thousand Five Hundred Dollars (\$71,500.00). The improvements shall be completed on or before May 17, 2001. Completion has been secured by a letter of Credit issued on behalf of C & C Land, LLC, in favor of Missoula County by First Interstate Bank.

Notice of Hearing - Chairman Carey signed a Notice of Hearing on the question of whether or not to submit to a vote of the qualified voters the question of exceeding the 5 mill maximum library levy by authorizing an additional levy of 3.5 mills for a period of 5 years, setting the hearing date for June 12, 2000, at 1:30 p.m. at the Public Library, 301 East Main, Missoula, Montana, 59802.

TUESDAY, MAY 23, 2000

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

ADMINISTRATIVE MEETING

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

Appointment – The Commissioners signed a letter to Jim Morton, Director, Human Resource Council, stating that Jennifer Carter has been appointed to serve as the Commissioners' representative for two years on the Missoula County Program Council.

Other items included:

- 1) The Commissioners signed a letter to Jim Morton, Human Resource Council, acknowledging that the Board of County Commissioners met with him on May 20, 2000, and concurred with the allocations made by his agency from the Emergency Shelter Grants Program for Fiscal Year 2001.
- 2) The Commissioners authorized a Phase II ESA by MFG, Inc. of the former Missoula County Shop Complex located at 3095 Stockyard Road in Missoula, Montana.
- 3) The Commissioners approved the Renewal Application for the HUD Supportive Housing Program grant, a 3-year renewal of funding for three units of the YWCA Transitional Housing Program. Missoula County administers this grant. The total amount is \$105,730 in HUD funds; no County match dollars are required. The Renewal Application was returned to Office of Planning and Grants for further handling.
- 4) The Commissioners approved an Application for the HUD Supportive Housing Program for three years of funding for eight units of the YWCA Transitional Housing Program. Federal funding had lapsed for this project, which has been administered by the YWCA. Under this new application, Missoula County will administer this grant. The total amount is \$206,878 in HUD funds; no County match dollars are required. The Application was returned to Office of Planning and Grants for further handling.
- 5) The Commissioners reviewed a letter from Charles S. Johnson, III, P.E., of DJ&A, P.C., regarding the plat approval of El-Mar Estates Phase I Supplement 2, and their proposition to provide the County with the cash to construct an easement at a later time when it can be installed to connect with other walkway(s). The projected cost of this section of walkway is shown on the enclosure, and this condition of plat approval has been approved by the County Surveyor. The request on behalf of Mr. Elmer Frame would be for him to provide the County the cash in the amount shown on the cost projection, and in turn the County agree to use the money for, if not the walkway, some other improvement in this subdivision and that upon receipt of the cash, the condition requiring the walkway would be satisfied. The Commissioners approved the development of a special fund for deposit of the monies, contingent on approval by counsel.

Discussion Items:

- 1) Michael Kennedy, Ron Ewart, and Barbara Evans were reappointed to three-year terms on the Missoula Development Authority. Their terms are effective July 1, 2000 through June 30, 2003.
- 2) The Commissioners agreed that the 2000 Polk City Directory would not be ordered this year.

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

WEDNESDAY, MAY 24, 2000

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

Claims List -- Commissioners Evans and Kennedy signed the Claims List, dated May 23, 2000, batch number 656 (pages 1-2), with a grand total of \$38,397.34. The Claims List was returned to the Accounting Department.

Claims List -- Commissioners Evans and Kennedy signed the Claims List, dated May 23, 2000, batch numbers 651, 652, 655, 660, 663, and 664 (pages 1-10), with a grand total of \$149,371.06. The Claims List was returned to the Accounting Department.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet:

Pay Period: 10 - Pay Date: May 19, 2000 - Total Missoula County Payroll: \$741,462.46

The Transmittal Sheet was returned to the Auditor's Office.

PUBLIC MEETING – May 24, 2000

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

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$194,535.27. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Hearing: Ueland Family Transfer

Chairman Carey opened the public hearing on the Ueland Family Transfer.

Michael Sehestedt, Chief Civil Attorney, presented the staff report

This is a consideration of a request to create a family transfer parcel for that parcel described in Book 415 Micro, Page 1171, in Section 26, Township 11 North, Range 20 West.

Carol Ueland has submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately two acres in size located near Florence off Old Highway 93. Ms. Ueland proposes to create a one acre parcel for transfer to her 28-year-old daughter, Tricia Lynn Ueland.

The history of the parcel is as follows: It was purchased by Carol A. Ueland in 1994 as a two acre parcel.

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

Carol Ueland was present and came forward to answer any questions the Commissioners may have.

Chairman Carey stated that the Family Transfer process allows a property owner to divide property without going through subdivision review. Under the law, the Commissioners are entitled to ask certain questions to determine if there is an attempt to evade subdivision review. He asked Ms. Ueland if she did intend to transfer this property to her daughter, Tricia Lynn Ueland?

Carol Ueland stated that was her intention. When she purchased the property, it had two homes on it, one of them a mobile home. The mobile is owned by a separate party and rents space from the Uelands. That mobile home will be moved off the property and when it has been transferred, her daughter will put a home on the property.

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

Commissioner Evans moved that the Board of County Commissioners approve the request by Carol Ueland to create a new parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Hearing: Eilers Family Transfer

Chairman Carey opened the public hearing on the Eilers Family Transfer.

Michael Sehestedt, Chief Civil Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract F of COS 4333 in SW 1/4, SW 1/4, Section 36, Township 11 North, Range 20 West.

James Jay and Roberta Lee Eilers have submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 10 acres in size located near Florence off Chief Looking Glass Trail Road. The Eilers propose to create an approximately 4.82 acre parcel for transfer to their 21-year-old son Robert Kistler Eilers. The 4.83 acre remainder parcel will be transferred to James Jay Eilers Jr., Robert's twin brother. The Eilers originally purchased a parcel 20 acres in size. The subsequent history of the parcel is as follows:

Parcel History	Year	Exemption Used	Applicant	Intended Recipient
COS 3891, two 4-1/2 acre parcels and a 14-1/2 acre remainder	1991	Family Transfer and Occasional Sale	Eilers	Aleta Marie Eilers
COS 4333, one 4-1/2 acre parcel and a 9-1/2 acre remainder	1994	Family Transfer	Eilers	Samantha Laurie Ann Eilers

According to the records kept by the Missoula County Surveyor and the affidavit of the applicants, they have previously transferred a parcel to each of their two adult daughters, and had one approved occasional sale, as follows:

Parcel Description	Year	Exemption Used	Section, Township and Range	Recipient
COS 3891	1991	Family Transfer	Section 36, Township 11 North, Range 20 West	Aleta Marie Eilers
COS 4333	1994	Family Transfer	Section 36, Township 11 North, Range 20 West	Laurie Ann Eilers
COS 3891	1991	Occasional Sale	Section 36, Township 11 North, Range 20 West	Third Party

James Eilers was present and came forward to answer any questions the Commissioners may have.

Chairman Carey stated that the Family Transfer process allows a property owner to divide property without going through subdivision review. Under the law, the Commissioners are entitled to ask certain questions to determine if there is an attempt to evade subdivision review. He asked Mr. Eilers if he did intend to transfer this property to his sons, Robert Kistler Eilers and James Jay Eilers Jr.?



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James Eilers stated that was his intention.

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

Commissioner Evans moved that the Board of County Commissioners approve the request by James Jay and Roberta Lee Eilers to create a new parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

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

THURSDAY, MAY 25, 2000

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

Claims List -- Commissioners Evans and Kennedy signed the Claims List, dated May 25, 2000, batch numbers 671 and 673, (pages 1-5), with a grand total of \$41,674.38. The Claims List was returned to the Accounting Department.

Claims List -- Commissioners Evans and Kennedy signed the Claims List, dated May 25, 2000, batch numbers 667, 668, and 664 (pages 1-8), with a grand total of \$61,452.85. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Resolution of Intent -- The Commissioners moved to adopt Resolution No. 2000-041, which would create Rural Special Improvement District No. 8841, for the maintenance of five (5) fire hydrants to be located in the Northgate Development Park, Missoula County, Montana, setting hearing date for June 21, 2000, at 1:30 p.m. The estimated annual cost of the proposed Maintenance improvements will be \$1,755.00.

Appointment -- The Commissioners signed a letter to Bryan Tracer appointing him to a three-year term as a member of the East Missoula Fire District Board of Trustees. His term will run through the first Tuesday in May of 2003.

Shoreline Permit - The Commissioners approved and Chairman Bill Carey signed a Permit allowing Bruce Richardson, represented by Don Larson, to reconstruct an existing dock on Holland Lake. The property is described as Lot 4, Tract 15, Section 29, Township 20N, Range 16W. The applicant proposes to install a 352 square foot dock, and all aspects of its design, location, and construction materials comply with the shoreline Regulations. The Office of Planning and Grants recommended approval of the permit. The Permit was returned to Brian Maiorano in the Office of Planning and Grants for further handling.

Certification of Acceptance -- Commissioner Evans signed the following Missoula County Surveyor's Office Certifications of Acceptance for County Maintenance:

- 1) Handley Loop; Road No. L-1622. The limits of acceptance are .601 miles.
- 2) Neighbor Way; Road No. L-1623. The limits of acceptance are .083 miles.

The Certifications were returned to the Surveyor's Office for further handling.


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

FRIDAY, MAY 26, 2000

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

Plat -- The Commissioners signed the Plat for Pleasant View Homes, Phase II, a subdivision located in the NW 1/4 of Section 7, T13N, R19W, P.M.M., Missoula County, Montana, a total gross area of 3.97 acres, with the owner of record being Pleasant View Homes, Inc.


Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chairman
Board of County Commissioners

MONDAY, MAY 29, 2000

The Courthouse was closed for the Memorial Day Observed holiday.

TUESDAY, MAY 30, 2000

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



Claims List – The Board of County Commissioners signed the Claims List, dated May 30, 2000, batch number 674 (pages 1-4), with a grand total of \$20,347.96. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Professional Services Contract - The Commissioners signed a Professional Services Contract by and between Missoula County and Bob Ranney, Principal Contractor of Spartan Renovation, to perform construction activities and restoration work for the LaLonde Ranch. The amount shall not exceed \$6,112.06. The term will be completion of performance in 18 months of the date of signing the contract.

Consulting Services Agreement – Chairman Carey signed a Consulting Services Agreement by and between Missoula County and MFG, Inc., dated June 1, 2000. MFG, Inc. shall provide all labor and materials, and Missoula County agrees to provide the necessary equipment for the completion of the Phase II Environmental Site Assessment, 3095 Stockyard Road, Missoula, Montana. The total estimated cost to complete the tasks 1-8 listed in the Scope of Work (as per the items set forth) shall not exceed \$3,000.00.

Universal Hiring Program - Chairman Carey signed a letter, co-signed by Sheriff Douglas W. Chase, supporting the application by the Missoula County Sheriff's Department for a Universal Hiring grant to fund up to four sworn officers for the Sheriff's Department. The Sheriff's office would then be supported by a separate special "County Public Safety Levy". Missoula County will take all possible action to bring this initiative before the voters within the next two years. Chair Carey and Officer Chase wrote that they promise that within ability possessed they will support the Sheriff's Department and carry over the positions funded for one fiscal year beyond the three year grant. The Plan was returned to Don Morman in the Sheriff's Department and is to be submitted with the grant application.

Other items included:

- 1) The Commissioners approved the following extension requests for EndoBiologics, and Ibey Sprinklers and Landscape:
 - a. Ibey Sprinklers and Landscape made an offer on Lot 1A, Block 4, Missoula Development Park. The offer matches the list price of \$145,734.00 and has been accepted. The closing date was May 12, 2000. Ibey has requested a 45-day extension to allow additional time for site plan and building permit review.
 - b. EndoBiologics made an offer on Lot 1B, Block 4, Missoula Development Park. The offer matches the list price of \$148,975 and has been accepted. The closing date is June 4, 2000. EndoBiologics has requested a 45-day extension to allow additional time for site plan and building permit review.

The requests were returned to Barbara Martens in the Projects Office for further handling.
- 2) The Commissioners reviewed and denied a request written by Jonathan Ford to Vickie Zeier, County Treasurer, asking for a refund for license plates ordered. Mr. Ford is moving out of the state. The letter was given to Deputy County Attorney Mike Sehestedt for review and further handling.
- 3) Postponed from May 25th, the Commissioners reviewed and denied a request from Ray Woodside regarding a tax bill. Deputy County Attorney Mike Sehestedt will write Mr. Woodside a letter in response.

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

WEDNESDAY, MAY 31, 2000

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

Claims List – Chairman Carey and Commissioner Kennedy signed the Claims List, dated May 30, 2000, batch number 675 (pages 1-2), with a grand total of \$384.40. The Claims List was returned to the Accounting Department.

Claims List – Chairman Carey and Commissioner Evans signed the Claims List, dated May 31, 2000, batch numbers 670, 672, 676, and 677 (pages 1-10), with a grand total of \$110,320.79. The Claims List was returned to the Accounting Department.

Monthly Report – Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for Justice of the Peace John E. Odlin, Justice Court 1, for the month ending May 31, 2000.

Notice of Hearing - Chairman Carey signed a Notice of Hearing to Increase Fees for the Missoula Valley Water Quality District, setting the hearing date for Wednesday, June 14, 2000, at 1:30 p.m. in Room 201. A 10% fee increase would raise the base residential fees in the Water Quality District from \$13 per year to \$14.30 per year for homes not connected to public sewer; and from \$9 per year to \$9.90 per year for homes connected to public sewer.



Notice of Hearing - Chairman Carey signed a Notice of Hearing for an Increase In Fees Charged by Sheriff, setting the hearing date for Wednesday, June 14, 2000, at 1:30 p.m. in Room 201. Most of the increases amount to \$5 per service provided, with some exceptions. The increases are based on human resources required and the rates of private process servers in the area.

Notice of Hearing - Chairman Carey signed a Notice of Hearing for Survey Review/Fees for Certificates of Survey and Subdivision Plats, setting the hearing date for June 14, 2000, at 1:30 p.m. in Room 201. The question is whether or not to impose fees for the examining land surveyor's review of subdivision plats and certificates of survey creating parcels of less than 160 acres.

Resolution - The Commissioners signed Resolution No. 2000-042, suspending a Trust for the accumulation and distribution of funds for property and casualty self-insurance. The Trustee, First Interstate Bank, N.A. of Missoula, will pay the remaining balance of the Trust Fund to Missoula County as instructed in writing by the Administrator.

Appointment - The Commissioners signed a letter to Susan Wall, of Alberton, Montana, appointing her as an "alternate member" of the Missoula Aging Services Governing Board to fill an unexpired term through December 31, 2001.

PUBLIC MEETING - May 31, 2000

The Public Meeting was called to order at 1:30 p.m. by Chairman Bill Carey. Also present were Commissioner Barbara Evans, County Surveyor Horace Brown, County Clerk & Recorder Vickie Zeier, Deputy County Attorney Colleen Dowdall and Chief Civil Attorney Michael Sehestedt. Commissioner Michael Kennedy was out of the office.

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$192,506.00. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Hearing: Scally Family Transfer - *Postponed from May 24, 2000*

Chairman Carey opened the public hearing on the Scally Family Transfer.

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract B, COS 4750.

Sean Scally has submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting act. The current parcel is approximately 25 acres in size located near Huson in the Six Mile area off Conifer Drive. This parcel was most recently divided by a court ordered transfer which created the 25 acre parcel. Mr. Scally proposes to divide the parcel into two parcels, each approximately 12-1/2 acres in size. He proposes to transfer the parcel to his father, John Scally.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Applicant	Intended Recipient
Tract B, COS 4750	1998	Retracement of a Court Order parcel	Moench	N/A

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

Sean Scally was present and came forward to answer any questions the Commissioners may have.

Chairman Carey stated that the Family Transfer process allows a property owner to divide property without going through subdivision review. Under the law, the Commissioners are entitled to ask certain questions to determine if there is an attempt to evade subdivision review. He asked Mr. Scally if he did intend to transfer this property to his father, John Scally?

Sean Scally stated that was his intention.

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

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

Commissioner Evans stated that this approval does not guarantee septic tank approval nor does it guarantee any roads will be constructed. Mr. Scally will receive a letter explaining his approval and what else may be necessary on the property.

Michael Sehestedt stated that the survey must state on its face that it has not been reviewed for access, availability of services, etc. The family transfer exemption allows for the transfer of land but the County does not share any responsibility for any other services. There has been a history of individuals abusing this exemption to the subdivision law. The Commissioners like to meet the applicants and be able to ask them questions if necessary.

Hearing: Hurt Family Transfer

Colleen Dowdall stated that no one was present to represent the Hurt family and requested that the hearing on their family transfer be postponed one week to June 7, 2000.

Commissioner Evans asked why the applicant had to be present if counsel felt this was not an attempt to evade subdivision review?

Colleen Dowdall stated the applicant needed to tell the Commissioners their intentions in person and be available to answer any questions. She would like to get the family transfers out of the public hearing process but it is the procedure that has been adopted. The applicant needs to be present in all cases or not present in all cases, not just when counsel is comfortable with the request.

Commissioner Evans suggested that streamlining this process be looked at, in light of the current budget situation.

Hearing: Card Family Transfer

Chairman Carey opened the public hearing on the Card Family Transfer.

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 12A of COS 4659.

Shoni Card has submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is 11 acres in size located off Moccasin Lane. Shoni Card received this parcel from her husband, Jeff Wilson, in 1996, transferred to her using the family transfer exemption. Shoni Card proposes to divide the parcel into two parcels, each approximately 5-6 acres in size, for transfer to her infant son, Luke Andrew Wilson.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Applicant	Intended Recipient
COS 1465	1978		Bruce Dailey	
COS 4659	1996	Family Transfer	Jeff Wilson	Shoni Card

According to the records kept by Missoula County, the applicant was the recipient of this parcel by approval of a family transfer. Her husband, Jeff Wilson, retained the remainder parcel of approximately 24 acres. He subsequently divided that parcel for transfer to the minor son of the couple, Paul Lyman Wilson. This request is to divide the parcel further for transfer to a second minor son. With the approval of this transfer, the originally purchased 35 acre parcel will have been divided into four parcels. Proof that the property was transferred to a trust for the benefit of the minor child could not be verified.

Shoni Card stated that the land transferred to her son Paul by her husband Jeff was placed in trust for Paul. That is also what they intend to do with this property for Luke.

Chairman Carey asked Ms. Card if she could assure the Commissioners that this was not an attempt to evade subdivision requirements?

Shoni Card stated this request was to create a college fund for her son Luke. It was not their intent to further divide the land and build houses.

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

Commissioner Evans moved that the Board of County Commissioners approve the request by Shoni Card to create a new parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review and under the condition that the transfer be to a trustee on behalf of Luke Andrew Wilson. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Michael Sehestedt stated that the survey must state on its face that it has not been reviewed for access, availability of services, etc. The family transfer exemption allows for the transfer of land but the County does not share any responsibility for any other services. For the record, when the Certificate of Survey is presented for filing, it will have to come in with a deed for the infant child in trust. This is part of the process for protecting the use of family transfers.

Hearing: Annexation to Seeley Lake Rural Fire District – (COS 5027 – Wildlands LLC)

Chairman Carey opened the public hearing.



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A petition has been received by the Clerk & Recorder's Office to annex a parcel of land, located in Missoula County, into the Seeley Lake Rural Fire District.

The petition has been checked and verified. It contains signatures of more than 40% of owners of the privately owned land in the area to be annexed and a majority of tax-paying freeholders within the area described, thereby meeting the requirements of 7-33-2125 M.C.A. for annexation of adjacent territory.

The area to be annexed is described as follows: "Tracts A & B of Certificate of Survey No. 5027 located in Sections 25 & 26, Township 16 North, Range 15 West, Missoula County, Montana."

Michael Sehestedt stated that the documents indicate a petition has been received signed by the owners of 50% or more of the property. Notice has been published of the proposed annexation. The purpose of this hearing is to determine whether or not 50% or more of the property owners in the existing district oppose the annexation. If there is no protest, the annexation may proceed. No representative from the Seeley Lake Rural Fire District was present and there have been no protest. The Seeley Lake Rural Fire Board has approved the annexation request. After this petition has been approved, the residents of Tracts A and B will be liable for Seeley Lake Fire District taxes in the future, they will not actually be taxed until next year. The district will begin providing protection immediately.

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

Commissioner Evans moved that the Board of County Commissioners approved the petition to annex "Tracts A & B of Certificate of Survey No. 5027 located in Sections 25 and 25, Township 16 North, Range 15 West, Missoula County, Montana" to the Seeley Lake Rural Fire District. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Hearing: Petition to Vacate a Portion of Fourth Street in Clinton

Chairman Carey opened the public hearing.

Horace Brown presented the staff report.

This is a petition to abandon "That portion of Fourth Street adjacent to Lot 8, Block 3 and Lot 14, Block 4 and also that portion of Fourth Street adjacent to Lots 7 & 8, Block 13 and Lots 1 & 14, Block 13, all in East Clinton, located in the SE 1/4 of Section 27, Township 12 North, Range 17 West, Missoula County, Montana.

The reasons for the request are as follows:

1. The portion of Fourth Street proposed to be abandoned has never been used as a street to the knowledge of any of the long-term residents interviewed. It is fairly heavily wooded with mature pine and cottonwood trees and has thick underbrush of choke cherry trees and other trees and brush.
2. All of the owners of land adjacent to the portion of Fourth Street proposed to be vacated are in favor of the vacation.

The following landowners have been notified: Jim and Connie Heath; Debbie and David Lorenzo; Phyllis Jamison; Charles R. and Frances H. Drinville; and James and Carla Taylor Jr.

Phyllis Jamison stated she started the petition at the suggestion of Steve Niday of the Surveyor's Office. As a result of the survey, it was determined that her house, which she recently purchased, sits in the middle of where the County road would be if it were built. Her real estate agent told her the street had been vacated but it was determined that it had not been vacated. The area is heavily wooded. She has obtained signatures from all adjacent property owners for the area to be vacated. There is one neighbor, who is not adjacent, who stated they neither approve nor oppose the vacation. They were concerned that if this area is vacated, another area of Fourth Street could get vacated which they use for recreational vehicle access. That portion of Fourth Street is not being proposed to be vacated.

Chuck Drinville stated he was aware of where Fourth Street was and the corner of his barn sits where Fourth Street would be. He is a long-time resident of Clinton and has no objection to this vacation petition, in fact, he would like it closed.

Colleen Dowdall stated that a site inspection must be conducted. No decision would be made today.

Commissioner Evans stated that, by law, one Commissioner and the County Surveyor must conduct a site inspection and report back to the Board before a decision can be made. Action will be postponed for one week, to June 7, 2000, to allow time for the site inspection.

David Lorenzo stated he is not opposed to the vacation petition. He owns property on a short section of Fourth Street that is not involved in this petition. He would appear at the hearing next week when the decision would be made.

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

Chairman Carey stated the site inspection would be scheduled and action on this petition would be postponed to next Wednesday, June 7, 2000.

Phyllis Jamison asked if she needed to be present for the hearing next week?

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Chairman Carey stated it probably was not necessary.

Phyllis Jamison stated that there were several large trees behind her house that had to be removed as they were too close to her house. One tree was only one foot from her house, in the area to be vacated. The tree had root rot and would have been a potential hazard to the home.

Commissioner Evans stated that would not make any difference. The major reason for the inspection was to see if the County would ever need this area for a road.

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

THURSDAY, JUNE 1, 2000

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

Indemnity Bond - Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Trudy Mizner as principal for Warrant #363199 on the Missoula County 2270 Fund in the amount of \$183.50 now unable to be found.

Replacement Warrant - Chairman Carey examined, approved, and ordered filed an Application for Issuance of a replacement warrant naming Jamie Kubichek as principal for Warrant #39018 issued February 10, 2000 on the Missoula County Payroll Fund in the amount of \$120.05, which was received by Jamie Kubichek, but then lost.

Monthly Report - Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Kathleen Breuer, for the month ending May 31, 2000.

ADMINISTRATIVE MEETING

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

Amendment - Chairman Carey signed an Amendment to the 2000 Missoula County Operating and Financial Plan for Reimbursable Services requested by USDA-Forest Service (adjusting number of patrols and reimbursable amounts) dated May 30, 2000, for the period beginning April 16, 2000 and ending September 30, 2000. The Amendment changes the total reimbursable services from \$29,598.24 to \$26,042.88, as per the items set forth. The Amendment was returned to Don Mormon in the Sheriff's Department for further signatures and handling.

Agreement - Chairman Carey signed a Service, License and Maintenance Agreement for a Message Switch Interface by and between Missoula County (Sheriff's Department) and Logistic Systems, Inc., as per the items set forth. The Agreement is funded by a Federal grant. The Agreement was returned to Don Mormon in the Sheriff's Department for further signatures and handling.

Other items included:

- 1) The Commissioners agreed to waive certain penalty and interest fees on the Personal Property Taxes of Nurture, Inc., as per the items set forth in Nurture, Inc.'s letter dated April 5, 2000. Nurture, Inc. will set up a contract to pay \$1,000 per month until the remaining outstanding tax balance are paid in full. The letter was returned to County Treasurer Vickie M. Zeier for further handling.
- 2) The Commissioners approved a counter offer dated May 30, 2000 to be returned to Properties 2000, on the offer to purchase Lot 1, Block 6, Phase 1, Missoula Development Park. Recommended by MDA Offer/Review Committee, the amendments include:
 - a) Change the offer price from \$115,000 to \$130,000 to match the list price;
 - b) Delete seller's responsibility to extend telephone service;
 - c) Extend the time frame to provide natural gas from June 16, 2000 to August 31, 2000; and
 - d) Access to public streets is contingent on receiving County Surveyor approval of use and plans.

The counter offer was returned to Barbara Martens, Projects Coordinator, for further handling.

- 3) The Commissioners approved the County staff recommendation for a bid from Keeney Construction Co., as the lowest and most responsive bidder in the amount of \$16,550.00, for Construction Contract Award of RSID #8466 - Huson Railroad Crossing Improvement.
- 4) Discussion Item:
A Resolution of the City Council Creating a Community Hazardous Materials Transportation accident Prevention Task Force appointed by the City of Missoula. The Commissioners asked Tony Tweedale to look into drafting a joint City-County resolution.

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

FRIDAY, JUNE 2, 2000

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 for the request to vacate a portion of Fourth Street in Clinton.

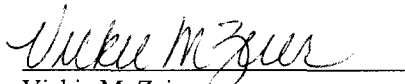
Claims List - Chairman Carey and Commissioner Kennedy signed the Claims List, dated June 2, 2000, batch numbers 679, 680, 682 and 685 (pages 1-6), with a grand total of \$123,415.60. The Claims List was returned to the Accounting Department.

Claims List - Chairman Carey and Commissioner Kennedy signed the Claims List, dated June 1, 2000, batch number 681 (pages 1-4), with a grand total of \$64,703.89. The Claims List was returned to the Accounting Department.

Extension - The Commissioners approved a request from Properties 2000 for an extension of the time for their response to the Counter Offer dated May 30, 2000. The response period is extended to June 13, 2000.

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Professional Services Contract – The Commissioners signed a contract between Missoula County, Missoula, and independent contractor Loris Staber to mow weeds within the Missoula Development Park, as per the items set forth. The contractor shall complete performance by June 8, 2000. The total amount shall not exceed \$1,500.00 (\$8.00 per acre).


Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chair
Board of County Commissioners

MONDAY, JUNE 5, 2000

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

Resolution No. 2000-043 – The Commissioners signed Resolution No. 2000-043 entitled: “Annexation to the Seeley Lake Rural Fire District – A Parcel of Land Located in Missoula County.” This Resolution annexes to the Seeley Lake Rural Fire District the parcel of land described as Tracts A and B of Certificate of Survey No. 5027, located in Sections 25 and 25, Township 16 North, Range 15 West, Missoula County, Montana.

TUESDAY, JUNE 6, 2000

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

ADMINISTRATIVE MEETING

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

Resolution No. 2000-044 – The Commissioners signed Resolution No. 2000-044 entitled: “Health Insurance Retirement Incentive,” in which Missoula County will pay the full health insurance premium for single coverage for a qualified employee as per the conditions set forth.

Amendment – The Commissioners signed Amendment II (CM 8199(49)) to the existing 1999 Missoula Transportation Demand Management Planning Agreement between Montana Department of Transportation and Missoula Office of Planning and Grants, executed May 4, 1999 and amended April 20, 2000. Further amended is the budget for Phase II-Year I of the Missoula TDM Project. This action is intended to maximize the effectiveness, provide a continuous flow of service, and close out Phase II Year I. Funding is reallocated in the amount of \$5,354 from Activity B, Community TDM Services to Activity A, Employer Implemented Activities and Community TDM Services.

Other items included:

- 1) The Commissioners approved and Chairman Carey signed Richard Lortz’s shoreline permit request to construct a 176 square foot prefabricated dock on Lake Inez. The property is at 156 Renzim Court, legally described as Plat B-Plat 1 and South 175’ lot 24 and Portion J, Streit’s Inez Lakeshore Sites, in SE ¼ Section 36 Township 18N, Range 16W. The permit was returned to Brian Mairorano in the Office of Planning and Grants for further handling.

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

WEDNESDAY, JUNE 7, 2000

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

Claims List – Chairman Carey and Commissioner Evans signed the Claims List, dated June 7, 2000, batch numbers 686, 688 and 689 (pages 1-8), with a grand total of \$53,409.42. The Claims List was returned to the Accounting Department.

Monthly Report - Chair Carey examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Justice of the Peace, Karen A. Orzech, for the month ending May 31, 2000.

PUBLIC MEETING – June 7, 2000

The Public Meeting was called to order at 1:45 p.m. by Chairman Bill Carey. Also present were Commissioner Barbara Evans, County Surveyor Horace Brown, County Clerk & Recorder Vickie Zeier, Deputy County Attorney Colleen Dowdall and Chief Civil Attorney Michael Sehestedt. Commissioner Michael Kennedy was out of the office.

Public Comment

Ron Ewart, 5201 Skyview Drive, stated he would like to bring up an issue very important to him. It has to do with the County Budget. He understood there were severe constraints and some very difficult decisions have to be made. He believed the Sheriff’s Department budget should not be cut at all, no cuts whatsoever. He knew that no one wanted to do that and ways to minimize the impact were being looked at. He also knew that this Board of Commissioners was very concerned about public health and safety, he has seen it reflected in their decisions and in their statements. The Sheriff’s Department is currently severely underfunded. If they were up to par, some cuts would not be too bad. Right now, there are an average of 5 deputies that are patrolling the entire County at once. The County is divided into 4 zones, with one deputy per zone plus one roving deputy, usually the sergeant. Some of these zones are as big as a small state back East. If

they had to respond to a serious call, the first thing they would need is backup. The backup would have to come from another zone, leaving two zones unpatrolled. Also, deputies patrol within the City limits. These young men and women have a difficult job, they are out there by themselves in the middle of the night when things can get scary, especially when something serious happens. They need to know that there are enough other people to back them up who can arrive in a short amount of time. It might be equitable for all departments to cut their budget and would normally be the way to accomplish the task. But it is important to remember that the most important County service that can be provided for its citizens is their safety. If it takes until noon for a snow plow to reach a road, someone might be inconvenienced, or someone may have to wait in line a little longer to get their car tags. If someone really needs a law enforcement officer in a hurry, it is more than just an inconvenience. He hoped that a way could be found to not cut the Sheriff's Department budget at all. It is very important to him and a lot of other people he has spoken with. A lot of people don't realize just how severely underfunded the Sheriff's Department is. He knows this is a difficult decision but hopefully something could be done so the department would suffer no cuts.

There were no further public comments.

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$241,528.91. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Decision: Petition to Vacate a Portion of Fourth Street in Clinton

This is a petition to abandon "That portion of Fourth Street adjacent to Lot 8, Block 3 and Lot 14, Block 4 and also that portion of Fourth Street adjacent to Lots 7 & 8, Block 13 and Lots 1 & 14, Block 13, all in East Clinton, located in the SE 1/4 of Section 27, Township 12 North, Range 17 West, Missoula County, Montana."

The reasons for the request are as follows:

1. The portion of Fourth Street proposed to be abandoned has never been used as a street to the knowledge of any of the long-term residents interviewed. It is fairly heavily wooded with mature pine and cottonwood trees and has thick underbrush of choke cherry trees and other trees and brush.
2. All of the owners of land adjacent to the portion of Fourth Street proposed to be vacated are in favor of the vacation.

The following landowners have been notified: Jim and Connie Heath; Debbie and David Lorenzo; Phyllis Jamison; Charles R. and Frances H. Drinville; and James Jr. and Carla Taylor.

A public hearing on this matter was held May 31, 2000. A site inspection by Commissioner Evans and County Surveyor Horace Brown took place on Friday, June 2, 2000.

Commissioner Evans stated from her perspective this was not a road. It is a treed area that has never been used and was unlikely to ever be used or would go anywhere if a road were put in. She saw no reason to deny the request and it would put the property back on the tax rolls.

Horace Brown stated the road is not being used and he felt it would not be needed in the future. There are two houses that encroach within the right of way. He had no problem with vacating the area. It is covered with trees and he could not see any use for it as a road.

David Lorenzo asked if it was feasible to vacate the whole street, or did he need to initiate another petition to vacate the rest of road? He owns property on both sides of what is considered to be Fourth Street.

Michael Sehestedt stated Mr. Lorenzo would have to come in with a new petition. The reason is that the Commissioners cannot vacate a road until public notice of their intentions has been made and the public has an opportunity to respond. Notice has been given and the process completed for this portion of Fourth Street. Because a petition has not been received and no notice has been given, the Commissioners have no jurisdiction to act on the section in front of Mr. Lorenzo's property. They cannot legally vacate any portion of a road that have not been petitioned and legally noticed.

Phyllis Jamison stated she was responsible for bringing this petition before the Board. She wanted to state, for the record, that Steve Niday from the Surveyors Office told her that her real estate agent may have made an honest mistake by telling her that part of Fourth Street had been vacated. On the County plat map there was a line that indicated the road had been vacated, but that line had later been whited out. She was also in favor of vacating the other part of Fourth Street and would sign a petition for Mr. Lorenzo. She wanted the two vacation requests keep separate because the part she was asking to be vacated had never been used as a street. The portion that Mr. Lorenzo is suggesting is being used as a street and one neighbor might possibly be opposed to the vacation. The neighbor uses that portion of Fourth Street for access for their RV, although another way can be used.

Commissioner Evans moved that the Board of County Commissioners approve the petition to abandon "That portion of Fourth Street adjacent to Lot 8, Block 3 and Lot 14, Block 4, and also that portion of Fourth Street adjacent to Lots 7 and 8, Block 13 and Lots 1 and 14, Block 13, all in East Clinton, located in the SE 1/4 of Section 27, Township 12 North, Range 17 West, Missoula County, Montana." Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Hearing: Jensen Family Transfer – Postponed from May 17, 2000

Chairman Carey opened the public hearing on the Jensen Family Transfer.

Colleen Dowdall presented the staff report.

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This is a consideration of a request to create a family transfer parcel for that parcel described in COS 4726, as Lot 5 B.

Mark E. and Seana Jensen have submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 14-1/2 acres in size located between Huson and Ninemile on the Clark Fork River. The Jensens propose to create an approximately 5 acre parcel on the north portion of the property for transfer to Mark's father, Wayne L. Jensen, retaining a 9-1/2 acre parcel.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Applicant	Intended Recipient
COS 3611 Creation of Lot 5	1986	Parcels greater than 20 acres	Western Financial Inc.	N/A
COS 4726 Creation of Lot 5A and Lot 5B	1997	Family Transfer	Mark Jensen	Seana Jensen

According to the records kept by the Missoula County Surveyor, the applicant has used the family transfer exemption to the Subdivision and Platting Act as set forth above. Creation of these lots was for transfer to Seana Jensen so that a second home could be constructed for Seana's parents.

Mark and Seana Jensen were present and came forward to answer any questions the Commissioners may have.

Chairman Carey stated that the Family Transfer process allows a property owner to divide property without going through subdivision review. Under the law, the Commissioners are entitled to ask certain questions to determine if there is an attempt to evade subdivision review. He asked Mr. and Mrs. Jensen if they did intend to transfer this property to Mr. Jensen's father, Wayne L. Jensen?

Mark Jensen stated that was his intention. They were unable to attend the previous hearing on this matter as his mother had just passed away.

Seana Jensen stated that they would like to have a home for Wayne Jensen near by so he could be close to their children.

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

Commissioner Evans moved that the Board of County Commissioners approve the request by Mark and Seana Jensen to create a new parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans stated that this approval does not guarantee septic tank approval nor does it guarantee any roads will be constructed. Mr. and Mrs. Jensen will receive a letter explaining this approval and what else may be necessary on the property.

Hearing: Hurt Family Transfer – Postponed from May 31, 2000

Chairman Carey opened the public hearing on the Hurt Family Transfer.

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract D, COS 4073.

Larry and Dorie Hurt have submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 20 acres in size located in the Farviews area off Whitaker Drive and accessed by a private road from there. The Hurts propose to create three parcels, each approximately 6-7 acres in size. One parcel is for transfer to their daughter, Tamarha Lynn Hurt and one parcel would be transferred to their son, Richard Raymond Hurt. The Hurts would retain a remainder parcel.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Applicant	Intended Recipient
COS 638	1975	Remainder parcel of 80 acres		N/A
COS 4073	1992	Parcels greater than 20 acres in size		N/A

According to the representations of the applicant, the applicant has not used the exemptions to the Subdivision and Platting Act.

Dick Ainsworth, PCI, was present representing Larry and Dorie Hurt. Larry Hurt had planned on attending the meeting but apparently was unable to make it. Colleen Dowdall had explained the request well and he would try to answer any questions the Commissioners may have.

Commissioner Evans stated the only question they would ask would be if Mr. Hurt really intended to make this transfer or was he trying to evade subdivision review.

Dick Ainsworth stated that the Hurts had told him they do intend to make the transfer as they have indicated.

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

Commissioner Evans moved that the Board of County Commissioners approve the request by Larry and Dorie Hurt to create two new parcels by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Hearing: Rideg Family Transfer

Chairman Carey opened the public hearing on the Rideg Family Transfer.

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described in Tract B, COS 2804.

William E. Rideg and Mark C. and Cassandra A. Rideg have submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is 9.92 acres in size located in the Ninemile area off Ninemile Road. William and Mark are brothers and they propose to create a parcel on the eastern portion of the property for transfer to their mother, Ann K. Rideg.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Applicant	Intended Recipient
COS 2775	1982	Relocation of Boundary	Hawk and Moore	N/A
COS 2804	1982	Occasional Sale	Hawk	N/A

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

William Rideg was present and came forward to answer any questions the Commissioners may have.

Chairman Carey stated that the Family Transfer process allows a property owner to divide property without going through subdivision review. Under the law, the Commissioners are entitled to ask certain questions to determine if there is an attempt to evade subdivision review. He asked Mr. Rideg if he and his brother did intend to transfer this property to their mother, Ann K. Rideg?

William Rideg stated that was their intention.

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

Commissioner Evans moved that the Board of County Commissioners approve the request by William E. Rideg and Mark C. and Cassandra A. Rideg to create a new parcel by used of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Hearing: Intent to Create RSID #8470 – Construction and Paving of Expressway Road in Development Park

Chairman Carey opened the public hearing on the intent to create RSID #8470.

Jesse Sattley, RSID Coordinator, presented the staff report.

This is hearing on the creation of RSID #8470 – Construction of Expressway Road from Butler Creek Road to DeSmet Road, Missoula County, Montana. A meeting and discussions were held with Missoula County officials, Montana Department of Transportation, Montana Rail Link and property owners of the proposed district to pursue the creation of a Rural Special Improvement District to construct and pave Expressway Road from Butler Creek Road to DeSmet Road. District boundaries were determined and are defined as an extended district that would benefit all the properties included. A Resolution of Intention to Create RSID #8470 was adopted on May 16, 2000, and set the public hearing date for the Board of County Commissioners to hear the proposed improvement district and decide the merits of the creation of the RSID. Missoula County staff and RSID Bond Counsel has reviewed method of assessment, boundary and benefit of the district. Bond Counsel will issue the opinion on the sale of Bonds to pay for the improvement within the proposed district.

Missoula County will be the district engineer.

Three letters of protest were received that represent approximately 13% of the cost.

Michael Sehestedt noted for the record that three protests have been received. If there are any other protests or additional comments on the creation of this RSID, he would ask those parties to come forward and speak.

Douglas Purl stated he was one of the owners of property to be assessed for this RSID. He did not receive any notice of the meeting referred to where this bond was discussed. His first notice of this action was the adoption of the May 16, 2000 Resolution of Intent to Create. He asked when that first meeting was held.

Michael Sehestedt stated the Commissioners did not meet, staff met and reviewed and developed the proposal and discussed it with Bond Counsel. The Commissioners were not involved with that process.

Douglas Purl stated the report said that the meeting included the affected property owners.

Jesse Sattley stated the meeting was between Missoula County officials, Montana Department of Transportation, Montana Rail Link and property owners to discuss the concept of paving the roadway. This was a meeting where Horace Brown, County Surveyor, had talked to the folks in area about creating this RSID. It was not an official meeting. It was preliminary discussions about how best to move the district forward.

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Douglas Purl asked when the meeting took place and who were the property owners invited?

Jesse Sattley stated he did not know, he was not involved with the process at that point.

Horace Brown stated the last meeting was held last year when staff met with the State and railroad and most of the people who owned land in that area. At that time it was determined to try and create this RSID and that the State and the railroad would provide some of the money to do this, and the County would have to match also. The State has provided \$75,000, the railroad has provided \$75,000 in the RSID and the County will provide \$75,000 from both the RSID and the design and construction management of the project.

Douglas Purl stated that perhaps those that were excluded from that meeting should be excluded from this district.

Michael Sehestedt stated that would happen only if they were excluded access to the road.

Douglas Purl stated he did not understand the estimated cost exhibit. Were there three \$75,000 contributions; the State, the County and the railroad.

Horace Brown stated that was correct.

Douglas Purl stated that equaled \$225,000.

Horace Brown stated the railroad was included within the RSID and they are providing \$75,000 as part of the RSID, charged against them. The State is providing \$75,000 from the safety fund and the County is providing their \$75,000 with the construction design and engineering and also the number of lots that the Development Park is paying the RSID on.

Douglas Purl stated those sums were not reflected on the exhibit. He was wondering why the RSID was for \$302,000 when \$225,000 of the \$412,000 projected cost has been accounted for.

Horace Brown stated that was included in the \$302,000.

Jesse Sattley stated there were two areas on the map, Area A and Area B. Area B is the Montana Rail Link right of way. Area A is all the other lots in the other division of the district.

Commissioner Evans asked Horace Brown to explain the two areas of the district.

Horace Brown stated the road begins at Butler Creek and goes to DeSmet Road, that is what is proposed. The total cost on that is \$301,990.50, after the State is taken out. The contingency fee of 10% is added in, MDT's \$75,000 is taken out as well as the Missoula County \$75,000 contribution. That leaves a subtotal of \$262,163.73. Then there is an administrative fee of 5%, which adds back in \$13,108.19 and the Bond Counsel fee of \$5,578.58. That subtotals to \$280,850.50. Then a 5% Revolving Fund of \$15,100 is added in, as well as a 2% Underwriter Discount of \$6,040. That totals to the estimated cost of \$301,990.50. The per parcel amount is not known yet, it will depend on the method of assessment. In Area A, there are 22 lots which will contribute \$226,990.50 and Area B, the railroad, will provide \$75,000 for their lots.

Commissioner Evans asked about the closing of the DeSmet railroad crossing. When the crossing is closed, will those in Area A have access to their property by any way other than using this new proposed road.

Horace Brown stated it would depend on which area they were in. There is an area that could have access to either road.

Commissioner Evans stated that if DeSmet is closed, they would have to use either Expressway or Butler Creek Road.

Horace Brown stated that was true. In most cases they have to use DeSmet or Expressway to get to their property. Most of them will be using Expressway because it is easier to travel.

Douglas Purl stated that since he was excluded from the meeting for whatever reason and had not had time to review these documents, he wondered if action could be postponed until all affected parties have had a full opportunity to meet.

Horace Brown asked which parcel Mr. Purl owned.

Douglas Purl stated it was the fifth parcel down, 11 acres adjoining the north-south branch of DeSmet Road, after DeSmet Road crosses the tracks going north, it goes beyond the junction where DeSmet "L's" to the right and goes up adjacent to the property where the storage company is located.

Chairman Carey stated the Board was not obligated to take action on this matter today.

Michael Sehestedt agreed with Chairman Carey.

Douglas Purl stated he had some other questions which could be postponed until more discussions were held or he could ask them now.

Chairman Carey stated he could ask his questions now.

Douglas Purl asked what the State safety contribution was.

Commissioner Evans stated it was railroad safety money.

Horace Brown stated the DeSmet railroad crossing is being closed and when that is done, the County receives money from the State to help close it.

Douglas Purl asked why the County wished to close that crossing?

Horace Brown stated it was probably the most dangerous crossing in Montana.

Douglas Purl stated it doesn't have a signal on it.

Horace Brown stated that was true and the railroad would not put one on it because it doesn't meet the warrants.

Douglas Purl asked what the warrants are?

Horace Brown stated it has to meet 200 and it is about 195 now, plus the design of the crossing prevents clear view of trains coming from the east. It is a very dangerous crossing.

Douglas Purl stated that Mr. Brown was saying it could not be remedied even with electric signals.

Horace Brown stated it could not. It would have to be redesigned and rebuilt in order to be a safe crossing.

Douglas Purl stated the fire response time would be increased by closing that crossing.

Horace Brown stated he was not sure that was true, a fire engine would be coming from the east, not the west.

Douglas Purl stated there was a fire engine to the west just right around the corner.

Horace Brown stated there was also one to the east, they could come from either direction.

Douglas Purl stated the adjacent fire engine was less than 1/2 mile from DeSmet Road.

Commissioner Evans suggested that the letters presented bring up some interesting questions. She had passed them to legal counsel for comment a few days ago. Michael Sehestedt had not had time to prepare those comments. This issue goes back to 1997 and has sort of gotten lost during the ensuing years. Now that the time has arrived to get the project done, a lot of the information presented in 1997 has been forgotten. She would like to have a meeting with Richard Reep, Mr. Purl and whoever else would like to come and get the facts as to why and what is being done. Then this issue could come back before the Board for action. This would allow time for everyone to have their questions answered. She believed this is something that needs to be done but who will be in the district has yet to be finally determined. She would like to postpone action on this until there has been a meeting between the railroad, MDT, Missoula County and the residents that have been properly notified of the meeting.

Michael Sehestedt stated he would like to hear testimony from others present today. The line about "a meeting" in the staff report has caused trouble.

Pat Cunningham stated his company is leasing property from the railroad on DeSmet right next to Johnson Bros. and Watkins-Shepherd Trucking. He was not protesting anything but he had some questions about weight limits. There are no weight limits on the road they currently use. Vehicles that load at his facility come from Kalispell, Whitefish, Hamilton. If they have to drive on a different road with weight limits, they might not pick up products at his concrete company, LaFarge Corporation.

Horace Brown stated if trucks could travel on the Interstate, they can travel on this road.

Pat Cunningham stated the DeSmet crossing is being closed so trucks will use the Butler Creek crossing. If there are trucks coming from the north off the main highway and there is a train at the crossing, the truck cannot pull off the main highway which will block traffic. A truck coming from town using Butler Creek would pull out into oncoming traffic to turn the corner. He would appreciate having another meeting to bring up all these factors with everybody involved.

Horace Brown stated there is a safe underpass which trucks can use which is safer than any railroad crossing because trucks don't have to meet or stop for trains. It is only about 3/4 of a mile further to travel.

Rick Reep stated he was speaking on behalf of his client, Gary Gallagher, who is opposed to and protesting this RSID, dating back to 1997. He would not bring up all the comments he has if there is going to be another meeting. The County engineer should be invited to this meeting, however. In trying to figure out what was going on with this RSID, he spent the better part of a day trying to run down documents to figure out what kind of a road was being proposed. Commissioner Kennedy said he thought extending the road was a good idea but with the ultimate goal of reaching Highway 10 and becoming some kind of a main bypass. The road that is being proposed is 12 feet narrower than the existing parkway. That creates problems for the turning radius for large trucks. He felt the cart was being put before the horse regarding this subdivision. The 11 parcels owned by Johnson Bros. have not been subdivided or approved for subdivision. All 11 of those lots and this proposed road is the very road they proposed in their subdivision. He client wanted to know why he was building a road for a subdivision that has not been approved. He had a number of other comments, but would reserve them if this matter was being postponed.

George Grutsch stated he owned the land north of DeSmet Road. He had many concerns but if the matter was going to be postponed, they would present them at the next meeting. The comment was made that there were three protests which amounted to 13% of the landowners, he felt that was closer to 40% or 50% of the landowners, there are not that many landowners in the area.

Michael Sehestedt stated the protest is by percentage of cost, not land. The protesters represented 13% of the cost of project.

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

Commissioner Evans asked that Horace Brown set up a meeting with the Commissioners and all involved parties, with proper notice given. The meeting should cover the need for the road, why it is being done and those who will benefit from it. Legal counsel should attend the meeting also.

Horace Brown stated he would like to look at the schedule and announce the time for the meeting today, as there is a deadline on this project.

Commissioner Evans asked what the deadline was?

Horace Brown stated the deadline was the first of August.

Chairman Carey stated the meeting on RSID #8470 would be scheduled for Monday, June 12, 2000, at 11:00 a.m., in Room 201 of the Courthouse Annex.

There being no further business to come before the Board, the Commissioners were in recess at 2:25 pm.

THURSDAY, JUNE 8, 2000

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

ADMINISTRATIVE MEETING

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

Agreement Revision – The Commissioners signed an Annual Revision to Agreement dated March 27, 1967, between Missoula County and the Forest Service. The parties shall maintain roads under their jurisdiction, with the exception of the items as set forth in the Maintenance Plan – 2000. The Annual Revision was returned to Chuck Wright in the Surveyor's Office for further handling.

Agreement – The Commissioners signed an Agreement by and between the Missoula City-County Health Department and the Frenchtown School District for provision of a Public Health Nurse, effective from August, 2000 through June, 2001. The total amount shall not exceed \$35,791. The amount shall cover the salary, fringe benefits, vacation time, and continuing education of the Public health Nurse assigned to the School, and the mileage costs incurred by the Public Health Nurse are related to her school nursing duties. Mileage will be computed at the determined county reimbursement rate. Department shall be paid a maximum of thirty-one (31) nursing service hours per week. School will be billed by the Department quarterly. The document was returned to the Health Department for further handling.

Other items included:

- 1) The Commissioners signed a letter (BCC-2000-171) to Elizabeth D. Metzgar, appointing her as a member of the Missoula City-County Health Board to fill an unexpired term through December 31, 2001, at which time she will be eligible for reappointment to a three-year term.

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

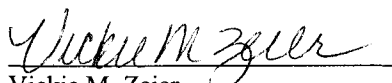
FRIDAY, JUNE 9, 2000

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

Election Canvass – In the forenoon, Commissioners Carey and Evans and County Superintendent of Schools, Rachel Vielleux, canvassed the Primary Election, which was held on June 6, 2000.

Claims List – Chairman Carey and Commissioner Evans signed the Claims List, dated June 9, 2000, batch numbers 678, 691 and 696 (pages 1-7), with a grand total of \$246,568.94. The Claims List was returned to the Accounting Department.

Contract #2-01-2028 A3 Amendment – The Commissioners signed Contract Amendment (Amendment #(3)), by and between the State of Montana, Department of Corrections, and Missoula County (original effective date July 2, 1996). This Amendment states that the Department of Corrections will pay (and will reimburse the County) for its proportionate share of cost overruns associated with design and construction of the Complex. The total amount shall not exceed \$526,497.28. The Amendment was returned to the Detention Center for further signatures and handling.


Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chair
Board of County Commissioners

MONDAY, JUNE 12, 2000

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

Claims List – Chairman Carey and Commissioner Evans signed the Claims List, dated June 9, 2000, batch numbers 692, 693 and 697 (pages 1-10), with a grand total of \$122,298.60. The Claims List was returned to the Accounting Department.

Monthly Report - Chairman Carey examined, approved and ordered filed the Report of the Sheriff, Douglas W. Chase, Showing the Items of Fees and Other Collections on Account of Civil Process Business in the County of Missoula, Montana, for the month ending May 31, 2000.

Agreement – The Commissioners signed a Deed Restriction Agreement, HOME Investment Partnerships, HOME Investment in Affordable Housing Program, by and between Missoula County (“Grantee”) and Michelle Y. Miller (“Property Owner”), 141 Ridgeway, Lolo, Montana 59847. Grantee has loaned to the Property Owner HOME funds in the amount of \$5,000 for the purpose of providing assistance for downpayment, closing cost and, if necessary, mortgage reduction assistance for the property located at 141 Ridgeway, Lolo, Montana 59847 and legally described as Lot S Block 5 West View, in Missoula County, Montana. The Commissioners also signed a Subordinate Deed of Trust by and between Missoula County and Ms. Miller. The beneficiary is Missoula County. This debt is evidenced by Borrower’s Deed Restriction Agreement. The documents were returned to Jennifer Blumberg in the Office of Planning and Grants for further handling.

Agreement -- The Commissioners signed a Deed Restriction Agreement, HOME Investment Partnerships, HOME Investment in Affordable Housing Program, by and between Missoula County (“Grantee”) and John M. Campbell (“Property Owner”), 2105 Eaton, Missoula, Montana 59801. Grantee has loaned to the Property Owner HOME funds in the amount of \$3,964 for the purpose of providing assistance for downpayment, closing cost and, if necessary, mortgage reduction assistance for the property located at 2105 Eaton, Missoula, Montana 59801 and legally described as Lot 1 and the East 22.5 feet of Lot 2 in Block 19 of Carline Addition, a platted subdivision in Missoula County, Montana. The Commissioners also signed a Subordinate Deed of Trust by and between Missoula County and Mr. Campbell. The beneficiary is Missoula County. This debt is evidenced by Borrower’s Deed Restriction Agreement. The documents were returned to Jennifer Blumberg in the Office of Planning and Grants for further handling.

PUBLIC HEARING – JUNE 12, 2000
HEARING ON SUBMITTING QUESTION OF EXCEEDING
MAXIMUM LIBRARY MILL LEVY TO THE ELECTORS
Hearing held at the Missoula Public Library, 301 East Main, Missoula, MT 59802

The Public Hearing was called to order at 1:30 p.m. by Chairman Bill Carey. Also present were Commissioner Barbara Evans and Commissioner Michael Kennedy.

Chairman Carey opened the public hearing on submitting the question of exceeding the maximum library mill levy to the electors on the November ballot.

The following people spoke in favor of placing this item on the November ballot.

Judy Mattson
Margery Doyle
Anna Doyle
Brian Doyle
Kyle Doyle
Richard Dunn
Carolyn Watt
Tom Sanders-Garrett
Mallory Cross
John Torma
Amy Mento
Lee Ballard
Mary Ann Bigland
Arlene Brown
Jennifer Copley
Jim Summerald

John Fletcher asked if the current 5 mills was mandated for the library?

Commissioner Kennedy stated that the 5 mills were mandated for the library.

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

Commissioner Evans moved that the Board of County Commissioners approve submitting the question of exceeding the maximum library mill levy to the electors on the November 7, 2000 ballot. Commissioner Kennedy second the motion. The motion carried on a vote of 3-0.

Following their vote, the Commissioners signed Resolution 2000-045 which allows the question of exceeding the 5 mill maximum library levy and authorizing an additional 3.5 mills for the library for a period of 5 years to the electors at the general election to be held on November 7, 2000.

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

TUESDAY, JUNE 13, 2000

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Kennedy was out of the office all day. In the evening, the Commissioners, representatives of EPA, Health Department staff, et al. participated in a tour of the Milltown Dam Reservoir.

Claims List – Chairman Carey and Commissioner Evans signed the Claims List, dated June 12, 2000, batch number 701 (pages 1-2), with a grand total of \$40,244.00. The Claims List was returned to the Accounting Department.

Claims List – Chairman Carey and Commissioner Evans signed the Claims List, dated June 13, 2000, batch numbers 695, 700 and 702 (pages 1-12), with a grand total of \$155,614.00. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Employment Contract – The Commissioners signed an employment contract between Partnership Health Center (“PHC”), a division of the Missoula City-County Health Department, and Michael Curtis, M.D., for the position of Primary Care Staff Physician at 30 hours per week (0.75 FTE) clinic care, plus after hours call, commencing on July 17, 2000. Under the general supervision of the PHC Medical Director, the primary care staff physician serves as a physician member of the PHC primary care staff, which includes mid-level practitioners and volunteer physicians. Dr. Curtis shall be paid an annual sum of \$75,000 for 0.75 FTE, and will also receive full-time benefits paid by Employer. Additionally, Employer shall also pay Dr. Curtis’s costs as follows:

1. Montana State Physician License (Board of Medical Examiner);
2. DEA license;
3. Montana Medical Association dues; and
4. Montana Legal Panel dues.

Other items included:

- 1) Chairman Carey signed a Second Modification to Purchase of Service Contract Number 200023PART0011; entitled “Partnership to Strengthen Families Project”, between Missoula County and the Montana Department of Public Health and Human Services. Section 4, Consideration, paragraph “A”, and Attachment “B” Budget are deficient. A new Attachment “B” Budget (amended on May 8, 2000) shall replace the former Attachment “B” Budget, and Section 4 shall be modified as follows:

“SECTION 4 CONSIDERATION”

In consideration of the services to be provided under Section 3 of this contract, the Department agrees to pay the Contractor up to \$132,500.00, subject to the following terms and conditions:

- A. The total sum for services to be paid under this contract must not exceed \$132,500.00
3. The parties further understand that this modification applies only to those portions of contract number 200023PART0011 which have been cited above, and does not alter or nullify any of the other portions of the agreement. All other portions of the agreement which are not referred to above remain in full force and effect.”

The document was returned to Peggy Seel in the Office of Planning and Grants for further handling.

- 2) The Commissioners approved (1) a new IBM maintenance contract for IBM RS6000 computer, serial number 000088329, and (2) an IBM contract to renew IBM maintenance contract for one year for the other seven RS6000 computers. The total amount shall be (1) \$758.00 per year (budgeted in FY2000); and (2) \$5,320.00 per year (budgeted in FY2000). The document was returned to Susan Bomstad in 9-1-1 for further handling.

- 3) Discussion Items:

A request for a proposed daycare in El Mar Estates was denied because no more hookups are allowed. County Administrative Officer Ann Mary Dussault will respond to the request.

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

WEDNESDAY, JUNE 14, 2000

The Board of County Commissioners met in regular session; all three members were present. In the morning, Commissioner Evans gave a Welcome at the Montana Sheriffs and Peace Officers Association Convention held at the Holiday Inn.

Grant Awards - Chairman Carey signed two grant contracts for on-going VOCA crime victims advocate grants from the Board of Crime Control. One is the original VOCA grant that was originally awarded in 1985. The other is in its fourth year. The fiscal impact or budget implications are: a match in the amount of \$9,628 from the City Attorney’s Office; \$9,628 from the County Sheriff’s Office; \$8,928 from the County Attorney’s Office; and \$15,113 from earmarked fine surcharges leverages \$63,135 in VOCA funding from the Board of Crime Control. All match amounts are loaded in the 10% budget reduction scenario. The originals of each grant were recorded and returned to Leslie McClintock in the Office of Planning and Grants for further handling.

PUBLIC MEETING – June 14, 2000

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

Public Comment

Ron Ewart, 5201 Skyview Drive, spoke about the budget for the Sheriff's Department. There are too few people patrolling the County roads to adequately serve the large County. That results in less than ideal back up and response time. The provision of public health and safety is the most important service that the government can provide to its people. This Commission is concerned about public health and safety. He felt the Sheriff's Department budget should not be cut at all. There are a number of threats to the public in the community. There is a lot of crime and emergency situations that happen that the public never reads about in the paper. He listens to his portable scanner all the time and is amazed at some of the things that happen that are never put in the newspaper. He did not want people to get a false sense of security. There is a growing methamphetamine problem, a growing gang problem. The Hells Angels are coming to town and it is unknown what will happen. They might like it here and come back next year or start a chapter here. There are armed militia groups in the area. Extremists wanted to converge on Libby on tax day to cause civil disobedience. Luckily that did not happen. The Rainbow folks are meeting at the Big Hole and the governor has called an emergency. Hopefully they won't come here next year. There are also natural disasters that could happen. These kinds of things could happen and will make it necessary to have a front line of defense. For the United States, that front line of defense is the Army, Navy, Air Force, etc. For the State it is the Army National Guard. For the City it is the Police Department. For the County, the only defense is the Sheriff's Department. They need to be ready, well equipped and trained in numbers sufficient to handle any kind of situation that might arise. He hoped the Commissioners would think about the budget cuts very carefully. There are some hard choices to make but if there is not adequate law enforcement, then nothing else really matters. The first thing this country did when it was formed was to provide for an army. It is very important to look at the big picture and the threats that are out there.

Commissioner Evans asked Mr. Ewart if he was aware there would be a discussion about the possible increase in Survey Review Fees today?

Ron Ewart stated he was aware of the discussion scheduled. To be honest, it didn't bother him a lot, the cost would be passed on to the client. If the Surveyors Office needs to collect those fees, then so be it. His main concern was law enforcement.

There were no further public comments.

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$564,725.54. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Bid Award: Backflow Prevention System on County Fairgrounds

Patty Rector read the staff report.

This is to award the bid for the Backflow Prevention System on the County Fairgrounds. The bids were opened on June 12, 2000, with the following results: Nelcon Inc. - \$41,590; Embe Construction - \$41,250; 4G Plumbing - \$52,321; Keeney Construction - \$51,459; and Fletcher Excavating - \$38,470.50. It is the recommendation of staff to award the bid to Fletcher Excavating in the amount of \$38,470.50 as the lowest and most responsible bidder. Their bid is \$11,529.50 below the engineer's estimate.

Commissioner Evans moved that the Board of County Commissioners approve the award of the bid for the Backflow Prevention System on the County Fairgrounds to Fletcher Excavating in the amount of \$38,470.50 as the lowest and most responsible bidder. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Chairman Carey stated that the hearing on the Missoula Valley Water Quality District Fee Increase would be the next item on the agenda.

Hearing: Increase Fees for the Missoula Valley Water Quality District

Chairman Carey opened the public hearing.

Notice was given that the Board of County Commissioners would conduct a public hearing on the question of whether or not to increase fees for the Missoula Valley Water Quality District. MCA § 7-13-4523 authorizes the Commissioners to increase fees up to 10% a year. A 10% fee increase would raise the base residential fees in the Water Quality District from \$13 per year to \$14.30 per year for homes not connected to public sewer; and from \$9 per year to \$9.90 per year for homes connected to public sewer.

Peter Nielsen, Missoula City-County Health Department Water Quality District, stated that the Water Quality District Board of Directors has proposed a 10% fee increase for the district to become effective in the next fiscal year. It was discussed at their March meeting. District staff had recommended a 10% fee increase be approved and the Board agreed. This would be the first increase since the District was established in 1993. The 10% fee increase would raise the base fees of \$9 and \$13 to \$9.90 and \$14.30 per year, based on sewer connection. The increase would appear on property tax bills in November, 2000. It will generate about \$30,800 in additional revenue. The increase is necessary to maintain the current District activities, staffing levels and services. These services include sewer connection incentives, annual household hazardous waste collection, projects in Milltown and White Pine, research efforts and public education. It is

not intended to create any additional programs or expand any existing programs. It is intended to maintain current services. The current services have been maintained for the past 7 years without any increases, but an increase has now become necessary. The FY 2001 District budget would support 4.17 staff FTEs, down from 4.67 in recent years. The District is allowed by law to increase its fees by only 10% per year without going through the resolution, protest and referendum process. Those are not necessary if the increase is kept to 10% or less. The fee increase is required to be approved by both the Board of County Commissioners and City Council pursuant to the Interlocal Agreement. He asked that the Commissioners approve this modest increase. He would answer any questions the Commissioners may have.

Commissioner Evans asked when the City Council would hear this item.

Peter Nielsen stated the City Council would hear this item on June 26, 2000.

Greg Martinsen stated he was a member of the Water Quality Board as he was an appointed member of the Missoula County Conservation District. The Board did not make this decision lightly in view of all the other monetary problems in the County. This is perceived as money that will work, not just play money. He would not be in favor of it if he thought it was anything but good hard money. He was in favor of the increase.

Traci Stone-Manning stated she was representing the Clark Fork Coalition. She urged the Commissioners to approve this increase. What the Water Quality District does is vital work, including their work with the Voluntary Nutrient Reduction Program (VNRP), hazardous waste program, Milltown, research projects and, most importantly, their public education. The public education is vital to water quality in the City and County, and beyond. The more educated the public is, the better they are for it. The Clark Fork Coalition relies on Peter Nielsen's help all the time and they are very appreciative of his staff's help. She again urged the Commissioners to support this increase.

Marge Hulburt stated she was Chairman of the Water Quality Advisory Council. The Council is very much in favor of the fee increase. Peter Nielsen mentioned the sewer incentives. The Council believes this is vitally important. The County has invested a lot of money in expanding and upgrading the sewer system. The incentive money is what gets people connected to the sewer. That helps by reducing the number of septic systems and allows the County to live up to the agreement with the VNRP. She has been very impressed with how the District is able to spend its money very effectively. They form partnerships, find grants and design their programs in a very cost effective way. The increase is needed and will be put to very good use.

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

Commissioner Evans moved that the Board of County Commissioners approve the 10% fee increase for the Missoula Valley Water Quality District. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Hearing: Increase in Fees Charged by Sheriff

Chairman Carey opened the public hearing.

Notice was given that the Board of County Commissioners would conduct a public hearing on the question of whether or not to increase fees of the sheriff for services provided in MCA § 7-32-2141. Most of the increases amount to \$5 per service, with some exceptions. The increases are based on human resources required and the rates of private process servers in the area.

Kathy Good, Civil Process Technician, Sheriff's Department, stated the Sheriff's Department is allowed by law to increase the Sheriff's fees for civil process once a year. It has been over a year since their last increase. They are limited by law not to exceed the rates of private process servers in the area. The proposal for increases is near the bottom of the scale of what is charged by private process servers in the area. The amount of fees collected in a year only covers one person's salary. There are 2.5 FTEs that work with civil process. Over 70% of their service is free as it is for government agencies. This increase is needed in light of the budget problems and the cost of the officers involved.

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

Commissioner Evans moved that the Board of County Commissioners approve the increase in fees charged by the Sheriff based on the information provided, including all 17 fees listed on Schedule A. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Hearing: Survey Review Fees for Certificates of Survey and Subdivision Plats

Chairman Carey opened the public hearing.

Doug Burreson, Surveyors Office, stated that the legal ad in the Missoulian was incorrect. The fee structure for Certificates of Survey listed the fees that would actually be charged for Subdivisions and vice versa. It was also the intent of this initiative to try to recover approximately 50% of the review costs. The numbers posted in the legal ad actually represented approximately 100% of the review costs. If it is the intent to recover approximately 50% of the cost, the review fees stated in the legal notice should be cut in half. He presented a spread sheet which showed the cost breakdown on COS and Subdivision review for the past 10 years and how the average cost was developed. The spread sheet also showed recovery of 100% of the cost and 50% of the cost. Calendar years 1995 through 1999 were used to project the fee schedule.

Greg Martinsen stated the information presented was hard to analyze on such short notice and he was not prepared to issue a response today. He presented a letter he wrote to the Commissioners. He requested that no decision be made today to allow adequate time for those interested parties to respond.

Steve Inabnit, Eli & Associates, stated he just became aware of this potential action yesterday. He felt that, by law, the County has the right to charge these review fees. However, as one who works with the public, he has to explain to the

client that in order to draw a line on the map it will cost them several hundred or perhaps thousand dollars. The public thinks he makes up these rules and it's difficult to explain all the costs involved. The public has a hard time understanding all the costs involved in providing a survey. For the sake of his clients, he would protest approving these review fees.

Chairman Carey read, for the record, a fax dated June 13, 2000, from Tim Wolfe of Territorial Engineering and Surveying Inc. *"We just received word about this issue and are upset that we were not notified formally or asked for comment. Please table your decision until the survey community has time to review and comment properly."*

Dick Ainsworth stated he echoed what Greg Martinsen said and what Tim Wolfe's fax said. He had just been made aware of this proposed action. He felt it would have been nice if those in the business who deal with these all the time had been given more notification. He had the information faxed to him yesterday and had passed it along to others in the business community. The spread sheet prepared by Doug Bureson was just received today and there has not been time to review it. He was not opposed to the concept of collecting review fees but would like more time to review the numbers. He has always questioned the field check by the Surveyors Office on subdivisions. There is no mention of that type of review in the law. It is done in Missoula County but he was not aware of other counties that conduct that type of review. His clients were always surprised that the Surveyors Office checks what they have already done. That seemed redundant. Surveyors are licensed professionals with a code they must follow. He asked that any action on this item be postponed until more discussions could be held. Any increase or new fees would ultimately be passed to the home buyer.

There being no further comments, the hearing was closed.

Commissioner Evans: If someone were going to give better notification to the surveying community, who would do that, the Surveyors Office, who would send out a notice to the engineering firms? Does anybody know?

Dick Ainsworth: Who are you asking?

Commissioner Evans: I'm asking the staff. I'm asking this staff who would be the one to notify the surveying companies if we wanted to formally notify anyone.

Michael Sehestedt: Basically, you can assign it, it could be your staff or you could assign it to whoever you wanted to assign it to.

Commissioner Evans: Thank you. That's all I need to know. I'm going to move that we readvertise this with the proper figures because the advertising that we did was inaccurate and what does the law require, two or three notices?

Michael Sehestedt: Basically, it just requires reasonable public notice. This is, we wanted to give notice so that we could get public participation. There's no particular special requirement for that. Typically, if we're going to publish, use the standard, publish twice at least 6 days between them, first publication not more than 21, last publication at least 3 prior to the date the action is going to occur on.

Commissioner Evans: Thank you. I move that we use that method of notification and I also move that the Surveyors Office send a notification of this to the engineering/surveying firms in Missoula, with the paperwork that Doug has been kind enough to provide, so that they have adequate time to comment and so that we have advertised correctly. That's my motion.

Michael Sehestedt: If I could make a suggestion. The advertising has been done and just to save the cost of another publication, I would suggest that we just continue this hearing for two weeks and have the Surveyors Office mail to each of the surveying and engineering firms a copy of the proposal, a copy of the Auditor's study and a statement that the Board is going to reconvene and continue the hearing in two weeks and at least save the cost of another publication in the paper.

Commissioner Evans: As long as there's no legal requirement that we advertise properly, I don't have a problem with that. So, we'll change my motion to we'll hear this matter again two weeks from today and in the meantime the Surveyors Office will send notification to the engineering/surveying firms in town, giving them the proper information and including the information from Doug and giving them the opportunity to comment.

Commissioner Kennedy: Well, I'm not sure I want to second the motion but I do want to make a comment about it. I think that the allowance in the law to review these surveys is a remnant of a past time before we had a recordation act and I think the comments that both Greg and Dick made are good comments. I'm questioning whether we ought to be conducting this review at all. We have, again, a recordation act that requires a certain level of professional performance here and before we had that we had the allowance in the law to review this and so my trail goes this way, that when we had surveyors, who called themselves surveyors but really weren't very professional in the field, we had a strong reason to have to review their work and to make sure it was done in a proper way. That's no longer the case. What we have is a professional registration program where people really understand what the level of responsibility is and they are obligated under law to provide surveys on a whole different plain than they did before and so it brings into question, in my mind at least, why we even review it. I think if you want include in your motion a discussion of the necessity to review it, then I'm happy to second it. If you don't, then I'm afraid I can't.

Commissioner Evans: I'm happy to do that, because the question comes to my mind and maybe because I'm forever concerned about liability and being sued, that if a registered surveyor brings us something and we go out and check it and maybe make the same mistake based on the same information, seems to me we've added our own liability to something that we didn't need to do. And I hear what you're saying as well and I think it's worth looking at, so yes, I'm glad to include that in my motion.

Commissioner Kennedy: I'm happy to second it. I'd ask both of you who testified, Dick and Greg, to come to us with some argument on why we ought to continue or not continue the practice. To me, that's really key here.

Chairman Carey: I'd like to hear from the County Surveyor as well. Okay, we have a motion, seconded, all in favor, please say "Aye."

Commissioner Evans: Aye.

Commissioner Kennedy: Aye.

Chairman Carey: Aye. Thank you.

Commissioner Evans: Can we get that done in two weeks, I should have asked that before I put two weeks in as my time frame on the motion.

Dick Ainsworth: Sure. Greg says no problem.

Chairman Carey: Any other business? Seeing none, we're in recess.

There being no further business to come before the Board, the Commissioners were in recess at 2:07 pm.

Following the Public Meeting, the following items were signed:

Resolution No. 2000-046 – The Commissioners signed Resolution No. 2000-046, a resolution adopting the fees set out in the schedule attached to the Resolution for civil process services provided by the Sheriff (M.C.A. 7-4-3241).

Resolution No. 2000-047 – The Commissioners signed Resolution No. 2000-047 establishing fee rates constituting a 10% fee increase for all fee-assessed units within the Missoula Valley Water Quality District, and that the fees shall be placed on the County tax assessments for each fee-assessed unit by the Department of Revenue or its agents beginning July 1, 2000.

THURSDAY, JUNE 15, 2000

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. In the evening, Commissioner Evans attended a Fire Protection Association dinner held at The Depot.

Claims List – Chairman Carey and Commissioner Evans signed the Claims List, dated June 15, 2000, batch numbers 703 and 704 (pages 1-6), with a grand total of \$28,399.97. The Claims List was returned to the Accounting Department.

Claims List – Chairman Carey and Commissioner Evans signed the Claims List, dated June 15, 2000, batch number 705 (pages 1-4), with a grand total of \$12,579.70. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Gwen Farnsworth as principal for Warrant #364135 issued May 16, 2000 on the Missoula County Accounting Fund in the amount of \$1,400.00 now unable to be found.

Resolution No. 2000-048 – The Commissioners signed Resolution No. 2000-048, entitled "Proposed Changes to Insurance Eligibility Policy" and "Proposed Changes to Layoff and Recall Policies", adopting attached Missoula County Personnel Policies (as per the items set forth), effective July 9, 2000, superseding policies 414.00, 602.00, 602.10, 602.20, 602.30, 602.40, and 602.50.

Resolution No. 2000-049 – The Commissioners signed Resolution No. 2000-049 entitled: "Cash Retirement Incentive," wherein Missoula County will pay a qualified employee the sum of \$5000 on the earliest practicable pay period following retirement from active service with Missoula County, as per the qualifications set forth therein.

Resolution No. 2000-050 – The Commissioners signed Resolution No. 2000-050 (Amending Resolution No. 2000-044) entitled: "Health Insurance Retirement Incentive," wherein Missoula County will pay the full health insurance premium for single coverage for a qualified employee for no longer than three (3) years, or to age sixty-five (65), whichever comes first. The health insurance will be that which is provided under the Missoula County Employee Benefits Plan (the Plan) or any successor plan. The health insurance will provide for medical coverage only and does not include dental, vision or any other benefits provided under the Plan. This incentive ceases if the qualified employee dies during the term of the incentive program. Qualifications are set forth in the resolution.

ADMINISTRATIVE MEETING

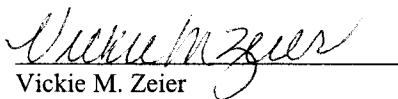
At the administrative meeting held in the forenoon, the following items were signed:

Professional Services Contract – The Commissioners signed a contract between Missoula County, Missoula, and Cary Larson, Principal Contractor, of Able Iron Works to install a 24" hand forged exterior railing on the front courthouse steps. The contractor shall commence performance on June 15, 2000, and shall complete performance by September 30, 2000. The total amount shall not exceed \$4,200.00; payment will be made upon completion and approval of project.

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

FRIDAY, JUNE 16, 2000

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


Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chair
Board of County Commissioners

MONDAY, JUNE 19, 2000

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

TUESDAY, JUNE 20, 2000

The Board of County Commissioners did not meet in regular session. Commissioners Carey and Kennedy were out of the office all day.

WEDNESDAY, JUNE 21, 2000

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

Claims List – Chairman Carey and Commissioner Evans signed the Claims List, dated June 20, 2000, batch number 717 (pages 1-5), with a grand total of \$12,224.14. The Claims List was returned to the Accounting Department.

Claims List – Chairman Carey and Commissioner Evans signed the Claims List, dated June 20, 2000, batch numbers 711 and 712 (pages 1-11), with a grand total of \$139,985.40. The Claims List was returned to the Accounting Department.

Claims List – Chairman Carey and Commissioner Evans signed the Claims List, dated June 20, 2000, batch number 715 (pages 1-2), with a grand total of \$3,112.14. The Claims List was returned to the Accounting Department.

Resolution No. 2000-051 – The Commissioners signed Resolution No. 2000-051, resolving to abandon the following property: That portion of Fourth Street adjacent to Lot 8, Block 3 and Lot 14, Block 4, and also that portion of Fourth Street adjacent to Lots 7 and 8, Block 14 and Lots 1 and 14, Block 13, all in East Clinton located in the SE ¼ of Section 27, Township 12 North, Range 17 West, Principal Meridian, Montana, Missoula County, Montana, and as shown on the attached Exhibit A (as per the items set forth). The vacation was found to be in the public interest because the right-of-way is not needed.

Task Order No. 01-07-3-31-009-0 – Chairman Carey signed Task Order No. 01-07-3-31-009-0 to the Missoula County Master Contract that covers the period July 1, 1998, through June 30, 2005, between the Montana Department of Public Health and Human Services and Missoula County. The purpose of this task order is to provide funding for a community-based tobacco use prevention and education program in Missoula County. The term of this task order for the purpose of delivery of the services required by Section 4 is from July 1, 2000, through July 30, 2001. This task order may be renewed in six (6) one-year intervals, not to exceed a total task order life of seven (7) years. In consideration of the services provided through this task order, the Department will pay Missoula County a total of \$112,541.00. The document was returned to the Health Department for further handling.

Contract Documents – The Commissioners signed Contract Documents for Mullan Road (Huson) Railroad Crossing RSID Project No. 8466 between Missoula County and Keeney Construction Company, dated June 15, 2000. The improvement contemplated consists of realigning and reconstructing approximately 630 linear feet of Mullan Road in the vicinity of Huson, Montana, to cross railroad lines owned and maintained by Montana Rail Link. Montana Rail Link shall be responsible for performing any modifications or improvements to the rail line itself. The work will be substantially complete within thirty (30) calendar days after the date when the Contract Time commences to run. The Total Bid Price is \$16,550.00. The Contract Documents were returned to Jesse Sattley, RSID Coordinator, for further handling.

Addendum – The Commissioners signed an Addendum to Buy-Sell Agreement for Additional Provisions between Missoula County and Manookian Developers, Inc. and/or assigns, dated May 8, 2000, concerning the property located at 3085/3095 Stockyard Road. Missoula County extends the date from July 8, 2000 to July 24, 2000 for additional \$20,000 non-refundable earnest money payment and release of contingencies due to time requirements for zoning compliance approval. The Addendum was returned to Katie Ward at Properties 2000 for further handling.

Forms – The Commissioners signed documents from the Farm Service Agency to qualify for the Production Flexibility Payment for the Missoula Development Park. Gary Tavenner, County Executive Director of the Farm Service Agency, has put together a map of the cropland within the Missoula Development Park showing the following:

1. Land that is now owned by the County;
2. Was a part of the old farm that Pruyn leased from the County in 1996 when the Production flexibility was established;
3. Has continuously been in that farm (with various farm numbers) since 1996; and
4. Currently can be considered agricultural land.

The County has updated the map that Mr. Tavenner submitted and has delivered it to Mr. Tavenner for his review. If the County meets the requirements stated above, the County is eligible to earn a Production Flexibility Payment on the acres within this farm. Mr. Tavenner has sent several forms to be signed by the owners in order to receive payment.

Mr. Tavenner estimates that the County will receive a payment of approximately \$2,500 - \$3,000. The documents were returned to Mr. Tavenner at the Farm Service Agency for further handling.

Subdivision Request – At the meeting of the Office of Planning and Grants, the Commissioners approved a proposal to add a house to a 1.29 acre parcel where one house currently exists at 2606 Sunset Lane, legally described as Lot 16, U.S. Government Survey No. 2, Section 30, Township 13 North, Range 19 West. The Office of Planning and Grants recommended approval of the 2606 Sunset Lane Subdivision for lease or rent, based on the findings of fact in the staff report and subject to the conditions in the staff report.

PUBLIC MEETING – June 21, 2000

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

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$196,301.35. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Chairman Carey stated that the Holt Subdivision for Lease or Rent would be moved up on the agenda and be heard next.

Consideration: Holt Subdivision for Lease or Rent (2 units on 1 lot) – Fontaine Drive

Mark Landkammer, Office of Planning and Grants, presented the staff report.

The applicants, Neil S. and Candy L. Holt, are requesting approval to add one dwelling unit to an 11-acre parcel where one dwelling unit current exists. The property is located in West Riverside at 1330 Fontaine Drive. The property is unzoned. The 1998 Comprehensive Plan designates this area as Suburban Residential with a residential density of two dwelling units per acre. The applicants use their parcel for residential purposes only. Land uses in the vicinity are residential up to 6 dwelling units per acre and open timber lands.

The applicants had a mobile home on the property and have since built a stick-built home. Due to family medical circumstances, the applicants are applying for a subdivision for lease or rent in order to keep the existing mobile home or replace it with a new one. There are two existing and separate septic systems and the property is on a community water system with the adjacent mobile home park.

The current access to the property is off Fontaine Drive. There are separate driveway aprons and paved off-street parking for each unit directly adjacent to Fontaine Drive.

There are two conditions recommended. One is the waiver of protest for an RSID/SID for public sewer and water systems as well as sidewalks or pedestrian facilities. The second is a \$100 large diameter hose fee to the Missoula Rural Fire District.

There are two variances recommended. One is for the right-of-way width for Fontaine Drive and the other is for the pavement width for Fontaine Drive.

There were no other significant issues related to the subdivision. The Health Department has approved the septic tank arrangements. Staff recommends approval of the subdivision for lease or rent.

Chairman Carey asked for public comments.

Neil Holt stated that he would like to have a small mobile home on the property so he could offer a university student boarding in exchange for some help with chores around the property.

Candy Holt stated they had no questions about the RSID waivers. Mark Landkammer had been very clear with his explanations.

There were no further public comments.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations for the right-of-way width of Fontaine Drive; approve the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations for the pavement width of Fontaine Drive; and approve the Holt Subdivision for Lease or Rent, based on the findings of fact and subject to the conditions in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Chairman Carey stated that approval of the subdivision for lease or rent did not automatically ensure septic approval from the Health Department.

Candy Holt asked what the status of the process was with this approval.

Michael Sehestedt stated there is still some paperwork that needs to be completed, but they were essentially done with the approval process. If the Health Department has approved the septic and the Commissioners have approved the subdivision, it is just a matter of tying up some loose ends. Mark Landkammer would assist them in completing the process.

Commissioner Evans stated that a few years ago the Holts had requested paving in their area. Now that the road is paved, were they satisfied.

Neil Holt stated they were very pleased with the paving and the dust problem has been eliminated.

Holt Subdivision for Lease or Rent Conditions of Approval:

1. The applicant shall file a document of record prior to final plan filing waiving the right to protest participation in a future RSID/SID for public sewer and water systems, as well as sidewalks or pedestrian facilities, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assignees of the owners of the land depicted herein. *Subdivision Regulations Article 3-7(2) and Article 3-2(5).*
2. The applicant shall contribute a \$100.00 large diameter hose fee to the Missoula Rural Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants prior to plan filing. *Fire District recommendation and Subdivision Regulations Article 3-7(1).*

Bid Award: 1100 Cubic Yards of Crushed Cover Aggregate (Road Dept.)

This is a request to award the bid for 1,100 Cubic Yards of Crushed Cover Aggregate – Stone Chips, Bid #2006-03, for the Road Department.

The bids were opened on Monday, June 12, 2000, at 10:00 am, with the following results: Montana Materials, Inc. - \$15,269.00; Keeney Construction Co., Inc. - \$13,860.00; and JTL Group Inc. - \$17,369.00.

It is the recommendation of the Road Department to award the bid to Keeney Construction Co., Inc. in the amount of \$13,860.00 as the lowest and most responsible bidder.

Horace Brown stated the award of this bid would be contingent on FY 2001 budget.

Commissioner Evans moved that the Board of County Commissioners approve the award of the bid for 1,100 cubic yards of crushed cover aggregate, Bid #2006-03, to Keeney Construction Co., Inc. in the amount of \$13,800.00, based on the contingency for the FY 2001 budget. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Bid Award: One 12 Yard Dump Body with Central Hydraulics System (Road Dept.)

This is a request to award the bid for One (1) 12-Yard Dump Body with Central Hydraulics System, Bid #2006-02, for the Road Department.

The bids were opened on Monday, June 12, 2000, at 10:00 am, with the following results: Williams Equipment – No Bid; and Kois Brothers Equipment - \$15,076.00.

It is the recommendation of the Road Department to award the bid to Kois Brothers Equipment in the amount of \$15,076.00 as the lowest and most responsible bidder.

Commissioner Evans asked if Kois Brothers was a local company.

Horace Brown stated they were local. The money for this item comes out of this year's budget.

Commissioner Evans moved that the Board of County Commissioners approve the award of the bid for one 12-yard dump body with central hydraulics system, Bid #2006-02, to Kois Brothers in the amount of \$15,076.00.

Commissioner Kennedy asked why there was only a single bidder.

Horace Brown stated the bid was sent to several companies. There were two bidders who responded, one of which had no bid.

Commissioner Kennedy asked if that was because of the way the specifications were written.

Horace Brown stated he did not believe so.

Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Bid Award: 300 Tons of CRS-2P Oil (Road Dept.)

This is a request to award the bid for Three Hundred (300) Tons of CRS-2P Oil, Bid #2006-01, for the Road Department.

The bids were opened on Monday, June 12, 2000, at 10:00 am, with the following results: Montana Refining Co. - \$66,351.00; Mountain States Materials - \$57,900.00; and Idaho Asphalt Supply - \$74,850.00.

It is the recommendation of the Road Department to award the bid to Mountain States Materials in the amount of \$57,900.00 as the lowest and most responsible bidder.

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Horace Brown stated this bid award was contingent on the FY 2001 budget.

Commissioner Evans moved that the Board of County Commissioners approved the award of the bid for 300 tons of CRS-2P oil, Bid #2006-01, to Mountain States Materials in the amount of \$57,900.00, based on the contingency for the FY 2001 budget.

Commissioner Kennedy stated there was a substantial difference in the bids. Could Horace Brown account for the differences.

Horace Brown stated that perhaps Mountain States has a better source for their oil.

Commissioner Kennedy asked where Mountain States was based.

Michael Sehestedt stated they were located in Polson. They were not a manufacturer, but a subsidiary. He suspected they had a contract commitment for oil at a lower price.

Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Hearing: Intent to Create RSID #8841 (Maintenance of 5 Fire Hydrants Located in Northgate Development Park)

Chairman Carey opened the public hearing.

Jesse Sattley, RSID Coordinator, presented the staff report.

This is a request to create RSID #8841 – Northgate Development Park Fire Hydrants, Missoula County, Montana.

A Resolution of Intention to Create RSID #8841 for a fire hydrant maintenance district to serve the area known as Northgate Development Park was adopted on May 25, 2000. The petition requesting the installation of five (5) hydrants was initiated by the owners of the properties within the District and supported 100%. Mountain Water Company will install the hydrants. Missoula Rural Fire District has reviewed the request and has approved the locations.

The estimated cost of maintaining the five (5) hydrants is \$1,754.55 per year including the County Administration fee of 5%. There are eight (8) lots in the district which spread the annual cost to \$219.32 per each lot.

No protests were received.

It is the recommendation of staff to create RSID #8841.

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

Commissioner Evans moved that the Board of County Commissioners approve the creation of RSID #8841 – Northgate Development Park Fire Hydrants, as no protest were received and the request is supported 100% by the proposed district. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Kennedy stated this area has an adequate supply of water for fire protection.

Michael Sehestedt stated that a lot of other areas beyond the Northgate Development Park would benefit from this system.

There being no further business to come before the Board, the Commissioners were in recess at 1:45 pm.

THURSDAY, JUNE 22, 2000

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.

Election Recount – In the afternoon, Commissioners Carey and Evans and County Superintendent of Schools, Rachel Vielleux, serving as the Board of Canvassers, conducted a recount of certain precincts from the Primary Election held on June 6, 2000.

Claims List – Chairman Carey and Commissioner Evans signed the Claims List, dated June 22, 2000, batch numbers 707, 716, 718, 720, 721 and 723 (pages 1-12), with a grand total of \$237,537.22. The Claims List was returned to the Accounting Department.

Claims List – Chairman Carey and Commissioner Evans signed the Claims List, dated June 22, 2000, batch number 719 (pages 1-6), with a grand total of \$153,105.38. The Claims List was returned to the Accounting Department.

Claims List – Chairman Carey and Commissioner Evans signed the Claims List, dated June 22, 2000, batch numbers 722 and 724 (pages 1-5), with a grand total of \$39,787.88. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Resolution No. 2000-052 – The Commissioners signed Resolution No. 2000-052, a Resolution of Intention to create Rural Special Improvement District No. #8842 for the purpose of the maintenance of one (1) fire hydrant to be located in T12N, R20W, Section 12, Tract C1 (to be known as Invermere, Phase 1 Subdivision), Missoula County, Montana.

The District number shall be #8842. The estimated annual cost will be \$350.91; each single family residential parcel will be assessed \$70.18 annually. The hearing date was set for July 19, 2000 at 1:30 p.m.

Resolution No. 2000-055 – The Commissioners signed Resolution No. 2000-055, a Resolution of Concurrence Allowing Extraterritorial Enforcement of Amendments to Missoula Municipal Code, Chapter 13.26, Entitled *Water Quality*.

Service Contract – Chairman Bill Carey signed a Mineral/Missoula County Service Contract with the County Superintendent of Schools to perform the duties required of county superintendents for the period from July 1, 2000 to June 30, 2001, upon the terms set forth therein. The Board agrees to pay Missoula County General fund at a yearly rate of \$3,300 for said services. The Contract was returned to Rachel Vielleux, Missoula County Superintendent of Schools, for further signatures and handling.

Professional Services Contract – The Commissioners signed a contract between Missoula County, Missoula, and independent contractor Dennis Lower of DLower Construction Inc. to provide all labor, materials and equipment to remove existing and reroof the southern and east entry exposure on the Youth Court building with 25 year shingles. This area is approximately 10 squares. Also included is a new torch down roof on the flat roof of the building. Project would be performed with all required flashings. The Contractor shall commence performance on May 25, 2000 and shall complete performance by June 15, 2000. The total amount shall not exceed \$3,185.00.

Other items included:

- 1) The Commissioners approved a Request to Award Bid to Iron Horse Towing for Sheriff's Department towing of vehicles; they then signed a contract between the Missoula County Sheriff's Department and Iron Horse Towing, dated June 1, 2000, declaring Iron Horse Towing the lowest and best bidder for towing services. The County shall pay the Contractor for the full and complete performance of the Contract, per the terms set forth in the bid, and an agreed upon GOA (Gone On Arrival Abandoned Vehicle) fee of \$10.00. The Contractor will accept the sum of \$200.00 per month storage rate plus all other charges, as set forth in the bid. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.
- 2) The Commissioners appointed Mark K. Mizner-Welch as a member of the Seeley Lake Solid Waste Management District Board. The term will commence immediately and run through December 31, 2002.
- 3) The Commissioners approved a Request for Commission Action, agreeing on the activities for which impact fees should be studied and for which a fee assessment program should be developed for future consideration. This, in part, fulfills a contractual Agreement between the City of Missoula, Paul Tischler and Associates, Inc., and Missoula County, wherein it is recommended to proceed with Tasks 2-7 and 9, and include all study categories recommended by the Consultant in the Scope of Work (as per the items set forth). \$15,000 is available for the study in the FY'00 Open Space Fund budget. The difference (\$21,750) can be supported utilizing unexpended FY'00 resources. If impact fees are implemented, the cost of the contract will be recovered within one year.
- 4) The Commissioners approved three (3) requests for Shoreline Permits, as follows:
 - A. Ron Chatriand is applying to replace an existing dock on Seeley Lake. The property is on Lot 8, Block B of Seeley Lake Forest Service lease sites. Mr. Chatriand proposes to construct a 344 foot square dock. Part of the dock is fixed and supported by piers; the other portion is a floating dock. All aspects of the dock design, location, and construction materials comply with the Shoreline Regulations. The Office of Planning and Grants recommended approval of the permit.
 - B. Peter Firth is applying to construct a dock on Salmon Lake. The property is at 2351 Highway 83 N, legally described as Lot 9 of Salmon Lake Shore. Mr. Firth proposed to install a 256 square foot prefabricated dock. All aspects of the dock design, location, and construction materials comply with the Shoreline Regulations. The Office of Planning and Grants recommended approval of the permit.
 - C. Mark Hollinger is applying to construct a dock and trail on Big Sky Lake. The property is on tract 6 of the Jewell Addition. Mr. Hollinger proposes to construct a 320 square foot square dock and shoreline trail. All aspects of the dock design, location, and construction materials comply with the Shoreline Regulations. The Office of Planning and Grants recommended approval of the permit.

The three requests were returned to Brian Maioriano in the Office of Planning and Grants for further handling.

- 5) Commissioner Michael Kennedy signed a State of Montana Board of Crime Control Grant Award for Western Regional Detention, dated July 1, 2000. The duration is July 1, 2000 through June 30, 2001. The State amount awarded is \$307,676.27; the guaranteed local matching amount is \$303,248.92. The Grant total amount is \$610,925.19. Commissioner Kennedy, as authorized representative of the grantee agency, signified acceptance of the described grant on the terms and conditions set forth or incorporated by reference therein.
- 6) Commissioner Barbara Evans signed a State of Montana Board of Crime Control Grant Award for Missoula Youth Court, dated July 1, 2000. The duration is July 1, 2000 through June 30, 2001. The Federal amount awarded is \$36,408.00; the guaranteed local matching amount is \$24,272.00. The Grant total amount is \$60,680.00. Commissioner Evans, as authorized representative of the grantee agency, signified acceptance of the described grant on the terms and conditions set forth or incorporated by reference therein. The Grant Award was returned to Brenda Johnson in Judge Larson's office for further handling.
- 7) Commissioner Barbara Evans signed a State of Montana Board of Crime Control Grant Award for Accountability Incentive/City-County, dated July 1, 2000. The duration is July 1, 2000 through June 30,

2001. The Federal amount awarded is \$147,246.00; the guaranteed local matching amount is \$16,361.00. The Grant total amount is \$163,607.00. Commissioner Evans, as authorized representative of the grantee agency, signified acceptance of the described grant on the terms and conditions set forth or incorporated by reference therein. The Grant Award was returned to Brenda Johnson in Judge Larson's office for further handling.

- 8) Commissioner Barbara Evans signed a State of Montana Board of Crime Control Grant Award for Enhancement of Missoula Youth Court, dated July 1, 2000. The duration is July 1, 2000 through June 30, 2001. The Federal amount awarded is \$9,728.00; the guaranteed local matching amount is \$14,591.00. The Grant total amount is \$24,319.00. Commissioner Evans, as authorized representative of the grantee agency, signified acceptance of the described grant on the terms and conditions set forth or incorporated by reference therein. The Grant Award was returned to Brenda Johnson in Judge Larson's office for further handling.
- 9) Commissioner Barbara Evans signed a State of Montana Board of Crime Control Grant Award for Intensive District Court Case Manager, dated July 1, 2000. The duration is July 1, 2000 through June 30, 2001. The Federal amount awarded is \$7,360.00; the guaranteed local matching amount is \$29,441.00. The Grant total amount is \$36,801.00. Commissioner Evans, as authorized representative of the grantee agency, signified acceptance of the described grant on the terms and conditions set forth or incorporated by reference therein. The Grant Award was returned to Brenda Johnson in Judge Larson's office for further handling.
- 10) Chairman Bill Carey signed a State of Montana Board of Crime Control Grant Award for Community Support System, dated July 1, 2000. The duration is July 1, 2000 through June 30, 2001. The Federal amount awarded is \$17,847.00; the guaranteed local matching amount is \$7,648.00. The Grant total amount is \$25,495.00. Chairman Carey, as authorized representative of the grantee agency, signified acceptance of the described grant on the terms and conditions set forth or incorporated by reference therein. The Grant Award was returned to Dori Brownlow in the County Attorney's Office for further handling.
- 11) Chairman Bill Carey signed a State of Montana Board of Crime Control Grant Award for Connections: Early Intervention Mentoring, dated July 1, 2000. The duration is July 1, 2000 through June 30, 2001. The Federal amount awarded, and the Grant total amount, is \$30,150.00. Chairman Carey, as authorized representative of the grantee agency, signified acceptance of the described grant on the terms and conditions set forth or incorporated by reference therein. The Grant Award was returned to Dori Brownlow in the County Attorney's Office for further handling.

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

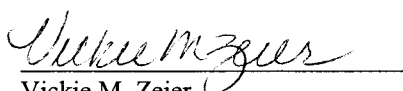
FRIDAY, JUNE 23, 2000

The Board of County Commissioners met in regular session; a quorum of members were present. Commissioner Kennedy was out of the office until noon; and in the afternoon, Commissioner Carey attended a Mental Health Board Meeting at Fort Missoula.

Payroll Transmittals – The Commissioners signed the following Payroll Transmittal Sheet:

- 1) Pay Period: 12 - Pay Date: June 16, 2000 - Total Missoula County Payroll: \$749,216.59.

The Transmittal Sheet was returned to the Auditor's Office.


Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chair
Board of County Commissioners

MONDAY, JUNE 26, 2000

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

Indemnity Bond - Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Stefani Jennings as principal for Warrant #112902 issued May 1, 2000 on the Missoula County Trust Fund in the amount of \$500.00 now unable to be found.

TUESDAY, JUNE 27, 2000

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

ADMINISTRATIVE MEETING

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

Resolution No. 2000-053 – The Commissioners signed Resolution No. 2000-053, a Resolution of Intention to Create Rural Special Improvement District No. #8841 for fire hydrant utility and maintenance of five (5) fire hydrants for Northgate Development Park, Missoula County, Montana. The property within said limits and boundaries of said District is declared to be the property to be assessed and taxed for the cost and expense of the operation and maintenance of the fire hydrants.

Contracts – On June 14, 2000, a bid was awarded to Fletcher Excavation, Inc. of Huson, Montana, for work on the Backflow System on the Western Montana Fair Grounds. Chairman Carey signed a contract, dated June 27, 2000, between Missoula County and Fletcher Excavation, Inc. for Water System Improvements – Phase 1 at the Western Montana Fairgrounds. The work, as set forth in the Contract, will be substantially complete within 50 days after the date when the Contract Time commences to run. The total estimated price is \$38,470.50. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

Amendment – Chairman Carey signed Amendment Number One to Task Order No. 00-07-3-01-114-0 to the Missoula County Master Contract that covers the Period July 1, 1998 through June 30, 2005. This Task Order between the Montana Department of Public Health and Human Services and Missoula County, is for the purpose of providing specialized services at the community level in support of a comprehensive, statewide tobacco use prevention and control program. Amendment Number One extends the completion date to June 30, 2000, amends the final annual report submission date to July 31, 2000, and amends the total amount to \$35,000 for actual expenditures in the categories as per the items set forth therein. The Amendment was returned to the Health Department for further signatures and handling.

Agreement – Chairman Carey signed a Project Site Agreement which delineates the terms, conditions, roles, and responsibilities regarding the participation of the Missoula City-County Health Department (“Project Site”) as a *Volunteer Montana!* project site, contingent upon receipt of continued funding from the Corporation for National Service for the program year as set forth in the Agreement. The Project Site shall commence performance on or about September 1, 1999 and complete performance on or about August 30, 2000. The Agreement was returned to the Health Department for further handling.

Other items included:

- 1) The Commissioners reviewed and approved the annual refund in the amount of \$5,659.50 relating to Main Extension Contract #499 between Mountain Water Company and Missoula County, effective December 31, 1998. The subject property is Missoula Development Park – Phase II, 12” Main Extension in Curlew Loop, W. Harrier and Kestrel Court (MWC W.O. 6190). The document was returned to Doug Harrison of Mountain Water Company for further signatures and handling.
- 2) The Commissioners appointed Sean Finley as a member of the Clinton Rural Fire District Board of Trustees to fill a vacancy on the Board. Mr. Finley’s term will commence immediately and run until the School Election is held in May of 2002. If Mr. Finley wishes to run for a position on the Board, he will need to contact the County Elections Office prior to the filing deadline, which is in February of 2002.
- 3) The Commissioners reappointed Gary M. Nash to a three-year term as a member of the RSID 901 Lolo Water and Sewer Board. Mr. Nash’s term will run through June 30, 2003.

Discussion items included:

- 1) Dust abatement – Southside Road, Alberton: Jesse Sattley will write a letter to applicant Jay Stiles.
- 2) Liquidated Damages for Detention Facility:
- 3) Airport Exchange Program.
- 4) MACo Annual Conference in September in Havre, Montana: Bill Carey will attend.
- 5) Letter to Bill Silverman denying his grievance (BCC-2000-184).

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

WEDNESDAY, JUNE 28, 2000

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

Claims List – The Commissioners signed the Claims List, dated June 28, 2000, batch numbers 725, 726 and 727 (pages 1-9), with a grand total of \$66,052.57. The Claims List was returned to the Accounting Department.

Certification – Chairman Carey signed a Certification of Selection of Jury List, selected at a meeting held in Missoula, Montana at the office of the Clerk and Recorder on June 12, 2000. The jury list, as per the names set forth therein, was transmitted to Vickie M. Zeier, Clerk of Court.

PUBLIC MEETING – June 28, 2000

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

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$496,483.05. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Consideration and Adoption: Resolution Relating to \$233,000 Limited Obligation Bond – Western Montana Fairgrounds Water Project

Michael Sehestedt stated this was the culmination of the process to do improvements to the water system at the fairgrounds. The public hearing has been conducted and all other necessary steps have been taken to issuing the limited obligation bonds. The fair will be borrowing from the DNRC Drinking Water Revolving Loan Program. The bonds will be repaid by the fair from fair revenues. The improvements are necessary from a safety and public health point of view.

Commissioner Evans moved that the Board of County Commissioners approve the Resolution Relating to \$233,000 Limited Obligation Bond (DNRC Drinking Water Revolving Loan Program), Series 2000; Authorizing the Issuance and Fixing the Terms and Conditions Thereof for the Western Montana Fairgrounds Water Project. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Continuation of Hearing: Survey Review Fees for Certificates of Survey and Subdivision Plats

Chairman Carey: Next is a continuation of a hearing on the Survey Review Fees for Certificates of Survey and Subdivision Plats. I wonder who wants to speak to that first? Horace, would you like to do that?

Horace Brown: This is a continuation of the public meeting that we had last time on fees to help pay for the cost of doing plat checks and also for checking monumentation in the field, and I think we'll have some comments from the audience on this today.

Chairman Carey: Okay, thank you. Is there anybody who would like to comment on this?

Charles Wright: My name is Charles Wright and I work for the County Surveyors Office. There are several items to discuss on this particular thing, and what I want to talk about right now, and I want to reserve the right to come back later and visit about a couple of different things, the first thing is, "Is office review of Certificates of Survey and Subdivisions for errors and omissions and calculations and drafting necessary?" And I think the answer is "Yes." It's necessary to maintain the integrity of Missoula County land records. It's necessary to assure the correct name of all roads. It's necessary to maintain legibility of all the records. And it's necessary to protect the public's interests in regards to defective surveys. And that's all I have to say about that particular portion of these questions that Commissioner Kennedy brought up about whether or not it was necessary to even do these reviews. Thank you.

Commissioner Evans: And that's all you want to say. Is that your final answer?

Charles Wright: That's my final answer, yes we need to check.

Commissioner Evans: Thank you.

Chairman Carey: Thank you. Anyone else like to comment on this?

Doug Bureson: My name is Doug Bureson. I also work for the County Surveyor's Office. As Charlie alluded to, there's three general stages of review that occurs for both COS's and subdivisions. There's the office check, errors and omissions and calculations and drafting, and for subdivisions, there's a field check. And lastly there is a record set check which, a little bit about that. Once the surveyor has corrected any errors that they've found in the errors and omissions check and they think they have it ready for recording, they prepare a record set, which is a Mylar and a cloth back and they submit that. It has to bear their original signatures and seals. At that point, if the monumentation is ready, the field crew may go out and do the field review, but also, that person who did the office review then reviews that record set to make sure that it is of sufficient quality in and of itself in terms of legibility that it should be filed for public record. They check the legibility in and of itself and they also look at that document, try to extrapolate through the eyes of the microfilm department and now, most recently, the imaging department, because we microfilm all those documents so that they can be used for archival purposes if we should ever have to restore the public record, if this building were to be destroyed for some reason. And most recently we've had a title company that imaged all of the Certificates of Surveys and subdivision up to about two or three months ago and we have a plan in place for the ongoing imaging quarterly for new COS's and subdivisions as they get recorded. And I think that's the one I really want to home in on, because as technology's changing you're starting to hear people talk about the virtual courthouse and how a lot of records that are in the courthouse building can become accessible via the Internet. Now, for a lot of citizenry, that really doesn't help them, they may not have Internet access, but for people like consultants and other repeat customers, they're going find that this is going to be the way that they access those records, more and more, and save themselves visits to the courthouse. That's why it's extremely important I think this record set check needs to continue. I'd just like to close by speaking to the issue that was raised two weeks ago about the notion that possibly that because surveyors and engineers have a board of registration that oversees them, that maybe doing any review work is redundant and not necessary. I tried to do a little random test to check that notion as it relates to document quality. So I looked in some old subdivision records in Book 1 and Book 3, that happens to be in the 1903-1940 era. I checked the first 10 subdivisions in each of those Books, both looking at microfilm and the imagery that we just had done recently. 55% of those images passed muster. They're usable if you were to put them out on the Internet today, but almost half of them weren't. Someone wants to access that document on the Internet, they're going to find portions of it that they can't read or they can't discern whether it's an eight or a six, those kinds of things. So then I looked up and found that the Board of Registration came into being in 1958, so I checked some subdivision records, Book 10 and Book 11 specifically, which is 1970 and 1975, and I found that only 20% of those records, as microfilmed and imaged, would pass muster, that you could view them sufficiently enough that they could stand on their own feet. Lastly, I checked Book 20 and Book 23, which is in 1995 and 1999, which happens to be a time period that our rigorous review of the record set for quality had been in place for some time, and found that 90% of those images passed. If someone wants to question my methods in terms of this being a random test or not, I would throw that open to discussion, but based on what I found, it seems to be pretty obvious that the continuation of reviewing those documents for quality before they are recorded has proven its worth, and in fact, as kind of an aside and goes beyond the scope of today's discussions, but I would encourage that we adopt national microfilming standards for drafting for large format documents and do that in a way that gives the surveyors plenty of lead time and have a voice in that discussion and

we could even make it better, we could get it to where it would be 100% of those images would be acceptable. It's going to be extremely important the more we get into this whole e-business everybody's talking about.

Commissioner Evans: Doug, the 40 years or thereabouts of documents that you said are not microfilmable good quality, are they readable to the eye, are they still usable documents?

Doug Burreson: They're readable. What I'm saying, Barbara, is, I found portions of those documents and I really didn't pay much attention to the verbiage that's of no great significance. I was looking mainly at the numbers on the picture part of the subdivision, bearings and distances primarily, or numbers in the legal description itself, stuff that I consider to be very important and if I found that, for instance, there was a time period when they prepared documents where they would type them on a typewriter with some backing, kind of a carbon process, and then that carbon copy is what would be cut in. A lot of that stuff, 6's and 8's and 9's, it becomes indiscernible as to what the number is.

Commissioner Evans: So even to the naked eye, it's not terribly readable, is that what you're saying?

Doug Burreson: Well, looking at the original document, there are even some images that you're hard pressed to be able to see on the original document. And I should mention as an aside in those early time periods, we have quite a volume of documents that were redrafts by the County Surveyor at the time. You've probably heard County Surveyor Dick Hale, that name referred to, maybe in the 1940's I think. One of the operations he did in their office was to take old subdivision plats, redraft them entirely, have them certified as true and correct copies, because the original itself, for reasons no one knows, got to the point you couldn't read it. Either it was poor from the get go or maybe it had been handled so much it just became so fragile that it couldn't be used. If we want to get to a point in the future where all of our subdivision and COS documents you can read everything on them, there are some documents in the record right now that a future public works department person is probably going to have make true and correct copies of, have them certified, and those will be what will be imaged, because the original that's in there now has portions of it that is illegible.

Commissioner Evans: Thank you.

Chairman Carey: Thank you Doug.

Dick Ainsworth: I guess it's my turn. For the record, Dick Ainsworth, I'm with Professional Consultants. Following the meeting we had last week, a group of surveyors did get together, at your suggestion, I guess, to discuss this issue. We met last Wednesday night. I think there were, I don't know, ten or twelve of us representing, I guess, four of the six firms that do the bulk of the survey work in Missoula County. As a group, and I don't want this to go out of this room, we agreed with Charlie Wright.

Commissioner Evans: Did you get that, Patty?

Dick Ainsworth: Chuck was at the meeting, I think maybe representing himself rather than the Surveyors Office, but, the group felt, in general, that the plat check was good. There were some that felt that the check probably went beyond what the law permits, which is specifically checking for errors and omissions and calculating and drafting, and they'd like to try to keep it reigned in to that and not things beyond that, but they did feel that the office check of those plats was worthwhile, that it improved the quality of the plats and the records as Doug indicated. I don't think that it's fair to compare a plat that was hand drafted by someone in 1904 and say, "Well, it's not legible now, and so if we're not checking the plats today, they won't be legible today."

Commissioner Evans: I didn't get that out of what he said.

Dick Ainsworth: Our methods of drafting these plats are substantially better than they were then and I think, other than perhaps a problem that we have sometimes with making sepia copies or Mylar copies that you run through a blueprint machine losing some of the quality, I think that the bulk of the plats that are prepared by surveyors today would be microfilmable and would be legible. But, the group as a whole did feel that that review was worthwhile and worth continuing. They also, ultimately, agreed, I wouldn't say initially agreed, that that isn't something that the County should, or the taxpayer should bear the entire burden of, that some of that should certainly be borne by the people that are having those surveys done. For the most part, the surveys that are done, the Certificates of Survey and subdivision plats are creating parcels of land for sale or adjusting boundaries. There are some surveys that are just a retracement survey of a person's boundaries, and having those recorded is good for public information, it isn't necessarily beneficial to the lot owner, he's not selling property to gain from it, but, the group also felt, I think unanimously, that the field check probably was unnecessary and from talking to Charlie and Horace, I think that field check over the years has become less stringent, for the lack of a better term, than it used to be. I think they used to go out and physically tie in a lot of the survey markers to make sure they were surveyed in properly. I think maybe they go out now to see if they're set and I'm not sure what all they do, but the group as a whole thought that that was probably not something that made a lot of sense and probably wasn't worth the cost, either to the County or to the individuals having the work done. There is a problem that the field check by the Surveyors Office doesn't solve and that's a problem of monumenting a subdivision, and then the power company and the phone company goes in and installs underground utilities. They come in and build the road and put in sidewalks and curbs and gutters and when they're all done, there aren't any survey markers left. The, having the County Surveyors Office check the field check before the plat is filed doesn't solve that problem, because they're there when they go out and check it and two or three months later they may all be gone. There is a provision in the law, and Charlie may address this later, I don't know, that says that, I think it says the County Commissioners are supposed to see that those get replaced if they've been removed.

Commissioner Evans: I'll get right on it.

Dick Ainsworth: That's been a law for years and years and years and again, I think that's an issue aside from the issue that we're talking about here, which is checking plats as they come in. Most of the utility companies, I know the larger ones, U.S. West and Montana Power and those folks, if you go to them, or a land owner goes to them and says, "You put a power line down the back of my lot and dug out my corners," they'll put them back in. They'll hire a surveyor and replace them and pay for that. So we probably need to do a little bit more of that, but again, I think that's an issue that's aside

from the issue that we're talking about now. The group also had a little different idea about how a fee might be charged for this. I guess our thought was to, the proposed fee, if I understand the latest version of this spreadsheet, would be to charge, well I know both, it's always been to charge two different rates, one for Certificates of Survey and one for subdivision plats. Certificates of Survey I think were suggested at \$32.50 a plat and \$13 a lot and subdivisions at \$63 a plat and \$8.50 a lot. I guess the group thought that it maybe made more sense to do something like \$50 a plat and \$10 a lot, period, and it didn't matter if it was a Certificate of Survey or a subdivision. If you were putting it in there for review, that's what you paid. Those numbers applied to the 1998 and 1997 or 1999 and 1998 numbers, would generate in excess of 50% of the cost that the County incurred in doing those. And bear in mind the cost that the County incurred in reviewing plats in 1998 and 1999 included a field check which was about 20% of the cost of subdivision check, or office checks. So if you were to adopt something like \$50 a plat and \$10 a lot, it would recover quite a little bit more, I think, that the 50% of the cost that your initial proposal said that you were seeking to recover. I guess the only caveats on that that the group had was that they felt that those funds ought to be earmarked for that specific purpose and they ought to be paid to the Surveyors Office and I don't know how the accounting of that is taken care of, but they shouldn't just be thrown in a big overall bag and sort of used.

Commissioner Evans: Did Horace put you up to this?

Dick Ainsworth: No, have not discussed this with Horace.

Commissioner Evans: I'm teasing you.

Horace Brown: I agree.

Dick Ainsworth: And if it, in fact, amounts to a reduction in the dollars they need, then there should be a reduction in the budget that goes to their office so we don't just kind of keep piling on top. Again, the group felt that it was reasonable to pay a percentage of that. I think these numbers would pay for more than 50% of it, perhaps as much as 70% or 75%, if you eliminated the field check, but we think those fees should be earmarked specifically for that purpose. I guess I'll sit down at that and I'm here to answer questions if you have any. Thank you.

Chairman Carey: Thank you Dick. Anyone else care to speak to this?

Chuck Wright: Seeing as how Dick ... this is Chuck Wright from the Surveyors Office again. Dick brought up this monumentation thing. The monument responsibility by the governing body is stated under the State law 76-3-403(2). It says: "It shall be the responsibility of the governing body to require the replacement of all monuments removed in the course of construction." My question to you is how you meet that responsibility? At the present time, the County Surveyors Office only meets about half that responsibility, probably not even that. After being at the meeting that he alluded to with the surveyors, when one of the surveyors said, "You know, these field checks are just canned." And I said, "Huh, what do you mean?" And he said, "Well, we have to pick a time when the contractor's not out there working and we go out and set the pins, you guys go check them, and then we're all set." And I said, "Well, there's deferred monumentation." They were saying that doesn't necessarily always work. What I came back with and talked to Horace about is how can we do this. Our field check probably is not the best thing in the world the way we're doing it, because it's not taking care of the problem. You people have the responsibility to put those monuments back in, and I mean, you're not going out and survey the thing, but you might like it. You just, it's your responsibility. So, somehow, we have to figure out how to do that in such a way that it helps the surveyors in the field to get everything necessary that they need done and how you can, you know, satisfy your responsibility. I always, you know, I've known that the utility companies have been very receptive to putting in monuments if they've destroyed them and I was completely unaware of how many times these surveyors have to go back and put these monuments in. I've known that they've, up on Brookside, I know Dick Ainsworth had to go set them and they were down at the bottom of a 7 foot trench. I mean, that doesn't make sense, but that was what he had to do to get the subdivision to go through to satisfy our policy in the Surveyors Office. So I don't think that policy is necessarily a good idea but I'm very much here to tell you I really want the monumentation to be taken care of in the essence of that law, I think that's a good law because what you're trying to do is protect the public on their monumentation. I don't think there's a surveyor here or anywhere will argue with that, I think they all want to do it. It's how to do it. So the way we're trying to get this done is probably flawed, but we need to sit down and discuss that at a different time, because what we're here today to talk about and discussion is first of all whether or not we want to do the subdivision errors and omissions checks in the office; two, how you want to get it paid for in this process. I think Dick's idea of \$50 and \$10, we mentioned a different figure at that meeting, but I'm not going to argue, they might have had a different meeting that I didn't come to, I didn't know it was going on. At a price of \$50 and \$10 per lot for the office check, that tickles me pink. The field check, now I think that's something that has to be discussed. They would like to get rid of it and after what I heard at that meeting, I'm not so sure that they're not right, the field check. But we, you can't let it go because you people are responsible for all those pins and we have to figure out a way how to take care of that. Now that's a whole other subject and I think we need to address that. Thank you.

Chairman Carey: Thank you Chuck. Colleen?

Colleen Dowdall: I just think the record needs to reflect that Chuck Wright and Charlie Wright are the same guy and that in one sentence he can refer to himself by those two different names, as Dick Ainsworth did also, and so for your, sometimes he even calls himself Charles.

Dick Ainsworth: There's other things he's called sometimes.

Doug Bureson: This is Doug Bureson again. Just a little additional information on the revenue portion of things. I was given a slightly different, what was going to be proposed, a slightly different fee structure so that's what I've got in the spread sheet here, but I can, I'll tell you what kind of revenue that would generate to give you some of that information and also, I went ahead and checked for the 1995 through 1999, the number of hours we've expended on field review has waffled between 15 and about, just a little over 20% for the 5 year period. Our overhead is about, a little over 17-1/2% of our hours goes into field review. That becomes meaningful when we talk about, I was given the numbers of, you were possibly going to propose a \$45 flat fee plus \$25 per lot, and I can tell you that when, for both COS's and subdivisions, so when you run those numbers, the \$45 flat fee plus \$25 per lot, you're getting anywhere from 70% to 103% of cost

recovery, including the field check, for an average of 83%. So if you were to take out the 16-1/2% hours of field check, a \$45/\$25 fee structure is going to give you, let's see, Pat's estimate, about 100% cost recovery. So if it was \$50 and \$10, you're going to be something less than 100%, I'd have to run the numbers. I wouldn't venture a guess, but that's where it would fall.

Chairman Carey: Thank you Doug.

Dick Ainsworth: Dick Ainsworth again. I might just clarify the different numbers. At that meeting we were talking, and Greg was there doing all of this calculating over in the corner, and he got us all so confused that we weren't sure what he was talking about, but he did have a number of \$45 per plat and \$25 per lot. This morning when I thought about coming to this meeting, I thought I ought to run those number and see what they do. And we were talking about having it at least be 50% and we didn't mind it being some more than 50% and when I ran through those number, I got the same thing Doug just said, it was anywhere from 80% to 103%, and I thought, well, that isn't what the group was talking about. So Greg's numbers, as hard as it is to believe, must have been wrong. So, I, rather arbitrarily said, well, \$45 is an odd number, let's do \$50 a plat. And then I looked at the numbers that they were proposing, and one of them was \$13.50 and one of them was \$8.50 and I thought, well, let's get right in the middle, that's \$10, so I came up with that number and then I ran it through those plats and, like I said, I came up with 51% to 57% and that includes covering the field cost. So, it's more than 50% but that's why the numbers aren't the same that they thought they were going to be, because I forgot to tell them that I, that Greg was wrong. Thank you.

Commissioner Evans: Greg, are you going to respond to that?

Chuck Wright: Yeah, he's busy, he not going to say a thing.

Greg Martinsen: They've got me surrounded back here and they won't let me out.

Chairman Carey: Would anyone else like to say something?

Commissioner Evans: I want to have Steve Niday put on the record, if you would, what you said in your letter, please.

Chuck Wright: Steve Niday is not here, he's in the field. This is Steve Smith.

Commissioner Evans: Steve Smith, sorry about that. I know that.

Colleen Dowdall: We can make it part of the record.

Chuck Wright: There's a letter written from Steve Niday.

Commissioner Evans: We can make it part of the record.

Chuck Wright: This is Chuck Wright, Charles Wright, Charlie Wright or whatever you want to call me. Steve Niday has given a letter to the County Commissioners regarding monuments and he suggests in there that our process is flawed because it's not what we're trying to do. But, what he is trying to tell you is it is very important to have monumentation and he talks about the law and how it is, how he feels about it, and on and on and on, and it's a very good read. And it's interesting, and even when he's talking about marking boundaries with the animals and things like that, that's pretty interesting. Anyway, I will get a copy, you've got one so you can put that in the record.

Commissioner Evans: Thank you. My apologies to Steve Smith.

Steve Niday submitted the following memo to be entered into the record:

TO: Missoula County Commissioners
FROM: Steve Niday
DATE: June 20, 2000
RE: Survey Monumentation

I offer the following commentary on the need for field checking survey monumentation as a current function of the County Surveyor's Office, in light of recent discussions about this function.

Section 76-3-403(2), MCA, states the following: "It shall be the responsibility of the governing body to require the replacement of all monuments removed in the course of construction."

This section has a significant impact on the governing body in all counties. In Missoula County's particular situation it is the Missoula County Surveyor's Office that is most directly affected. I agree with the intent of the law, so I speak from this position. If there are those who disagree, the Legislature is their recourse. There is a vast body of written material; federal, state and local laws and regulations, court opinions, surveying manuals, and published papers, affirming and supporting the importance of the physical survey monument. It is the physical monument that is given the most weight and is superior to all other evidence when determining land boundaries. It is this rule of man, and actually all animals, that is essential to the orderly occupation of land. There are boundary stones that have been in place for 5000 years. I would argue that physical monuments to mark claims of ownership began when the first animal marked a natural object with a natural substance. Cross the line in the sand and the result is conflict. Since we believe ourselves to be a bit more civilized than other animals, we use different materials to monument our claims and different methods to determine the proper location for the monuments, but the principles are the same. The monument rules. This is as it should be, for the average citizen does not possess the means to establish a boundary by employing survey techniques and equipment. The average citizen relies on surveyors to do this, and then relies on the monument placed by the surveyor to indicate the boundaries of the claim. It is the monument that by its very nature is the most easily identifiable evidence of a claim. I suspect there would be far fewer boundary disputes if all the monuments

placed with good technique and intent were still in existence. Unfortunately this is not the case, and in fact, boundary disputes are the second most heard civil case in our courts. It is from this perspective that I argue the importance of upholding and complying with this monumentation law.

"It shall be the responsibility of the governing body to require the replacement of all monuments removed in the course of construction." I have read that line many times in the past and even given it some thought. Having recently revisited it, I have more respect for the author and a better idea of what the ramifications are to the "governing body." To comply with this section of the law, it seems to me there are two main aspects to consider. We must first determine the existence of the monument, for without that how can we prove removal. Secondly, we must determine the causative agent, to which we would address the replacement burden. At this point I would like to include disturbance as a cause for replacement, since depending on the degree of disturbance and the land values involved, a disturbed monument may be no better than none at all.

Montana was originally surveyed by U.S. Government surveyors and divided into sections and townships in what is known as the Public Land Survey System (PLSS). It is from this initial framework that private claims were filed under the Homestead Act. This PLSS framework was monumented, and these monuments serve as the best evidence of the location of the original private claims. Since the initial claims were made, many have been divided into smaller areas. Each time a division is made, the controlling element for the location of the new lines is the existing monuments. Lose one monument and additional resources are expended to determine the position that monument held. Replace one monument and some uncertainty is included in its position. Every time this process repeats itself additional resources and uncertainty is introduced. In other words, anytime a monument is lost the effects are potentially felt by more than just the property owner whose monument was destroyed. "My" monument most likely marks my neighbors claim also. If "our" monument is lost, it very well might affect the person two lots down, especially if a surveyor is called in to re-survey that person's lot.

So, how do we implement a procedure that assures compliance with the law and protects everyone from the inherent costs and problems associated with lost monuments. We could pass a resolution requiring the replacement of any monument removed or disturbed by anyone, with such extreme consequences that monument destruction would be very rare. This would require a "monument police" force, and is obviously not the answer. I believe the best approach is through education and insurance.

The education should be a combined effort by surveyors, and state and local government to increase monument awareness. This could come in the form of radio, television and newspaper public service announcements. Direct mailings would target those companies that come into frequent contact with survey monuments. If a person knows the value of something, and costs associated with its replacement, there is a much stronger incentive to protect it. The ancients placed such a high value on survey monuments they invoked specific deities to protect them and curse any who would disturb them.

The insurance should come in the form of insuring adequate monumentation of all new divisions of land and retracement surveys and protection for existing monuments. This would be done by an expansion of the County Surveyor's current policy of field checking new monumentation in all new city and county subdivisions, to include field checking all new monumentation. To meet this extra burden on the County Surveyor's Office, a "per monument" fee may be necessary. In addition to all new monuments, efforts should be made to insure the perpetuation of the existing PLSS monuments and other controlling monuments, from which most other monuments are linked. In fact, the County Surveyor's Office has made significant efforts towards this perpetuation in the past, and should continue these efforts in the future. An increased effort should be made to compel those that destroy or disturb survey monuments to replace them. I believe this can most effectively be accomplished through the use of financial consequences. As an example, when a utility company destroys a monument and is compelled to hire a surveyor to replace that monument, it quickly becomes apparent to the offending company that additional efforts at monument avoidance are in their best interest. Excavators have learned the importance of calling "ONE CALL" for utility locations. The location of survey monuments prior to excavation or construction could be handled by the same system. Private surveyors could enter into contracts to provide location services. It is much less expensive to find and mark a monument than to replace it. When the construction is completed, a follow-up visit by the surveyor would identify problems. If monuments were destroyed or disturbed during construction, the person responsible would be required to hire a surveyor to replace the monuments. I believe much of the administration of this system could be taken care of by existing systems, i.e., excavation permits, building permits, and the subdivision and certificate of survey review process. For this system to work, independent confirmation that the monument was actually set when reported is essential. If this step does not take place, I anticipate an inability to successfully pursue a claim for re-monumentation. I see no better way to insure this than comprehensive field checks of a new monumentation. The most logical entity to perform that check is the Missoula County Surveyor's Office.

Chairman Carey: Further comment? Seeing none, I'll close the hearing. Is there any action you want to take on this now.

Commissioner Evans: I have mixed emotions about this. I did talk to Mike Sehestedt today and he assures me, and I've asked for a written opinion on it, that doing the monumentation checks and the errors and omissions, does not extend the liability to us. I want to make sure that what we're doing does not increase our liability situation. He tells me that it does not. So I'm going to ask for a written opinion on that because I want it in the record. I have no quarrel with charging \$50 and \$10, I have no problem with that. But I do have a problem with hearing that what we're doing in the way of field checks isn't accomplishing what we hope to accomplish. So I'm going to make the motion that we accept the \$50 and \$10 recommendation on these fees, but that there be a process set up to assess what's a better process to use to accomplish what we're supposed to accomplish. And please don't let that go away, because, if I go out there to do what the statute calls for, we're going to be in real deep trouble. Okay? That's my motion.

Chairman Carey: Thank you. Do we have anything in the record that, any spreadsheet of any kind that indicates a \$50 and \$10 allocation is 50% of our costs. Is that in the record anywhere? It's part of the testimony here just.

Doug Bureson: No, I ran \$45/\$25.

Dick Ainsworth: All I did was I took 1998 and 1999, they were the two most recent and the two most expensive years and the two with the most lots. I used the numbers out of Doug's spreadsheet and I came up with a total of 218 plats, Certificate of Survey and subdivision plats together, that was in 1998 and I came up with a total of 718 parcels, Certificates of Survey and subdivisions. I multiplied the 218 times \$50 a plat and the 718 times \$10 a lot and I got, in round numbers, \$18,000. The costs that are on the spreadsheet are something like \$35,741, total cost. And I just divided those and got 51%. I went through the same numbers in 1999 and there were 195 plats total, 933 lots, multiplied 195 times \$50, the 933 times \$10, and got, in round numbers, \$19,000, and that came out about 57% of the costs. Now again, these costs include the field check, which we were suggesting, at least in its current form, be eliminated, so it would cover more than 50% and that's how I got those numbers.

Chairman Carey: Thank you. Horace?

Horace Brown: One thing I'd like to point out is that this fee is charged the same for Certificate of Surveys and subdivisions. It's probably less expensive to do the Certificate of Survey than it is the subdivision, so in a way, some of the money from that is going toward the check on the subdivision. I don't have any problem with it as long as the surveyors don't have any problem with it. I think it's, by having one fee, it's a lot easier than having one for each different type of survey you do.

Commissioner Evans: Dick, when you had your meeting, the concept of \$45/\$25 or \$50/\$10, most of the surveyors agreed that that's okay, if it's a straight across the board?

Dick Ainsworth: They all did that were at that meeting, and they were, our firm was represented, Greg was there, DJ & A was represented and Ed Fleming with Territorial was there. There was nobody there from Eli and Associates and there was nobody there from WGM, although they were invited, but everybody that was there agreed to those numbers.

Commissioner Evans: Okay, thank you.

Dick Ainsworth: And to the concept of covering 50 or more percent.

Chairman Carey: I guess I'm just a little concerned on going with a couple of years.

Colleen Dowdall: I think we're okay, though, for, if Susan is here, are you comfortable with the figures.

Susan Reed: Yes, they were fairly consistent over the five years that we had data on.

Colleen Dowdall: So we probably have a factual basis that's adequate.

Chairman Carey: Okay, thank you.

Commissioner Evans: I am concerned about continuing the field checks currently if they're not doing what we want them to do, so I would hope that within a very short period of time, and you'll have to tell me what that would need to be, that we can improve the process so that we're actually accomplishing what we're supposed to be doing.

Chairman Carey: I agree.

Commissioner Evans: Is there a time frame, Horace, that you think we can get this done it, because I don't want to forget it.

Horace Brown: Well, I think we need to do quite a bit of discussion on this and decided what the Board wants us to do, and when we need to check these plats, I mean, some of them may not be ready to check for three or four years and we need to know whose going to keep track of the time and whose going to notify us to do it. We have deferred monumentation now that goes a year and then I renew it if they haven't been able to put the plats in. I think that might be the way to go with it in that the deferred monumentation, the surveyor is required to notify our department when it's ready to be checked.

Commissioner Evans: I don't want to be put in the position where I tell you what I want, because I haven't got a clue what I want. I want you to find something that meets the legal requirement, does the job the way all of you guys think it needs to be done and then you bring it to us and tell us what it is and how it will work and that it meets the statute.

Horace Brown: That's fine, but I still want your input.

Commissioner Evans: Okay, okay.

Chairman Carey: Okay. Well, I second your motion. All in favor?

Commissioner Evans: Aye.

Chairman Carey: Aye. Okay, other business? Seeing none, we're in recess. Thank you all.

The motion carried on a vote of 2-0.

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

Resolution No. 2000-054 – Following the Public Meeting, Chairman Carey signed Resolution No. 2000-054, a Bond Resolution relating to \$233,000 Limited Obligation Bond (DNRC Drinking Water Revolving Loan Program), Series 2000 (Western Montana Fairgrounds Water Project); Authorizing the Issuance and Fixing the Terms and Conditions Thereof.

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THURSDAY, JUNE 29, 2000

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.

Claims List – Chairman Carey and Commissioner Evans signed the Claims List, dated June 29, 2000, batch number 730 (pages 1-6), with a grand total of \$1,882.63. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Modification No. 5 – Chairman Carey signed Modification No. 5 of Agreement 290039, between Missoula County and the Montana Department of Environmental Quality ("DEQ"), extending the date to June 30, 2001 for preparation of a facility plan necessary to apply for a Federal grant to construct wastewater treatment works for the Golden West Area of Missoula. The Modification No. 5 was forwarded to the Montana Department of Environmental Quality in Helena, Montana, for further handling.

Modification No. 5 – Chairman Carey signed Modification No. 5 of Agreement 290040, between Missoula County Water and Sewer District and the Montana Department of Environmental Quality ("DEQ"), extending the date to June 30, 2001 for preparation of a facility plan necessary to apply for a Federal grant to construct wastewater treatment works for the El Mar Estates Area of Missoula. The Modification No. 5 was forwarded to the Montana Department of Environmental Quality in Helena, Montana, for further handling.

Agreement – Chairman Carey signed a Deed Restriction Agreement, HOME Investment Partnerships, HOME Investment in Affordable Housing Program, by and between Missoula County ("Grantee") and Beverly Suzanne Reynolds ("Property Owner"), 4113 Barbara Lane, Missoula, Montana 59803. Grantee has loaned to the Property Owner HOME funds in the amount of \$3,000 for the purpose of providing assistance for downpayment, closing cost and, if necessary, mortgage reduction assistance for the property located at 4113 Barbara Lane, Missoula, Montana 59803 and legally described as Lot 25 in Block 1 of Rehder Homesites. The Commissioners also signed a Subordinate Deed of Trust by and between Missoula County and Ms. Reynolds. The beneficiary is Missoula County. The loan evidenced by the Note and secured by this Security Instrument is being made pursuant to the HOME Investment Partnership Program and the regulations issued thereunder. The Agreement was returned to Jennifer Blumberg in the Office of Planning and Grants for further handling.

Budget Transfer – The Commissioners signed a Budget Transfer (Control Number 00-019) requested by the Missoula County Health Department to move \$750.00 into the capital budget line. The transfer was made from Ground MTC & Repair to Capital – Tech Equipment.

Budget Transfer – The Commissioners signed a Budget Transfer (Control Number 00-022) requested by the Missoula County Health Department to move \$13,368.00 into the capital budget line. The Covering Kids match was included in the wrong category of revenue. The transfer was made from Covering Kids (\$12,500) and Contracted Services (\$868) to Local Match --Covering Kids and Capital – Vehicle.

Mutual Aid Agreements – The Commissioners signed Law Enforcement Mutual Aid Agreements between the Missoula City Police Department, the Missoula County Sheriff's Department and the following law enforcement agencies: Utah Dept. of Public Safety, Utah County Sheriff, Weaver County Sheriff, and the St. George Police Department, for the purpose of permitting the parties to provide mutual aid and assistance which transcends jurisdictional boundaries and which insures the prompt and effective delivery of law enforcement and emergency services to areas which, due to geographic remoteness, population sparsity, and economic and other factors, are in need of an increased law enforcement presence, specifically the Hell's Angels gathering which will be held in Missoula the end of July, 2000.

Other items included:

- 1) The Commissioners approved a refund of \$24.60 to Martin Halko for property tax penalty and interest charges. A Memorandum from Deputy County Attorney Michael W. Sehestedt to the Commissioners recommended the offering of a refund of penalty in the interests of good will and in consideration of the fact the tax system is difficult to understand. The Memorandum was forwarded to Vickie M. Zeier, County Clerk and Recorder/Treasurer, for further handling.

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

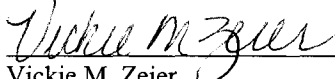
FRIDAY, JUNE 30, 2000

The Board of County Commissioners did not meet in regular session. Commissioner Kennedy was on vacation; Commissioner Evans was out all forenoon and in briefly for signatures in the afternoon; and Commissioner Carey was out all afternoon.

Claims List – Chairman Carey and Commissioner Evans signed the Claims List, dated June 30, 2000, batch numbers 728, 729, 732, and 733 (pages 1-7), with a grand total of \$86,808.84. The Claims List was returned to the Accounting Department.

Claims List – Chairman Carey and Commissioner Evans signed the Claims List, dated June 29, 2000, batch numbers 734, 735, and 736 (pages 1-8), with a grand total of \$119,657.59. The Claims List was returned to the Accounting Department.

Amendment – Chairman Carey signed Amendment Number Two to Contract Agreement No. 3668-02, dated October 31, 1997, between The University of Montana (Rural Institute on Disabilities) and Missoula City-County Public Health Department. This Amendment modifies the terms and conditions of their Contract Agreement as per the items set forth therein. The document was forwarded to the Rural Institute on Disabilities at the University of Montana for further signatures.


Vickie M. Zeier
Clerk & Recorder


Bill Carey, Chair
Board of County Commissioners