

TUESDAY, JULY 1, 2003

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

Claims Lists – The Commissioners signed two (2) Claims Lists, dated June 30, 2003, with the following grand totals:

- 1) \$20,479.37; and
- 2) \$40,517.54.

The Claims Lists were returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated July 1, 2003, with a grand total of \$600.00. The Claims List was returned to the Accounting Department.

Monthly Report – Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending June 30, 2003.

#### ADMINISTRATIVE MEETING

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

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Tim Weisenburger of GCS Research, LLC, for the purpose of upgrading current GIS Map Server software to an ASP.NET Application. This will also upgrade the software used by the Property Information System on our County website. The total amount shall not exceed \$6,450 (at \$75.00 per hour). The term will be July 1, 2003 through December 15, 2003.

Agreement – The Commissioners signed a Partner Agency Agreement between United Way of Missoula County and Partnership Health Center Pharmacy ("PHC") for the purposes of conducting a Management Effectiveness Review at PHC. The term will be July 1, 2003 through June 30, 2004 (FY 2004). All other terms and conditions are set forth therein. The document was returned to Terry Delgadillo at PHC for further handling.

Amendment – The Commissioners signed an Amendment, dated July 1, 2003, to the Memorandum of Agreement between Missoula County and The National Coalition Building Institute. Amended is the total value of the contract from up to \$5,294 to up to \$7,954. These funds will cover the months of July and August, and will assist the YWCA on racial justice work, as well as community organizing on issues of domestic violence with underserved populations in Missoula. This Amended Agreement will terminate on August 31, 2003 (amended from June 30, 2003).

Agreement – Chairman Carey signed an Agreement, dated July 1, 2003, between Missoula County and Eric Dowling of Frenchtown, Montana, for the construction of four park benches at several points alongside the Frenchtown Walkway, which will serve as "rest areas" along the path. This project will help Mr. Dowling satisfy requirements to acquire the rank of Eagle Scout within the Boy Scouts of America. All materials and labor will be provided by Mr. Dowling.

Agreement – Chairman Carey signed an Agreement between Missoula County and the Montana Department of Environmental Quality ("DEQ") for the purpose of assisting Missoula to conduct its own air pollution control program pursuant to Section 75-2-301, MCA. The term will be July 1, 2003 through June 30, 2004. DEQ agrees to pay Missoula up to a maximum of \$95,904 by reimbursing allowable expenses incurred during the billing period. All other terms and conditions are set forth therein. The document was returned to the Health Department for further handling.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 03-046 reflecting end of year transfers for the Weed Department, in the total amount of \$7,765.00. Reflect is a reimbursement for work on Weed Education Projects, and a transfer of excess operations total to capital for unanticipated remodel costs.

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Steve Kent of Superior Yard Care for the mowing of weeds within the Missoula Development Park by July 11, 2003. The total amount shall not exceed \$2,500 (at \$56.00 per hour).

Agreement – Chairman Carey signed a Missoula County Employee Pass Program Agreement between Missoula County and the Missoula Urban Transportation District (Mountain Line) for the continuation of free bus service for all Missoula County employees. The term will be July 1, 2003 through June 30, 2004. The total value for these services is \$7,540.00. Commissioner Evans abstained from voting on this item.

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Dick King of MAEDC (Missoula Area Economic Development Corporation) for the provision of an economic analysis of the remaining County-owned lands in the Missoula Development Park. The total amount shall not exceed \$9,750.00. All other terms and conditions are set forth therein.

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Cathy Joy, LPC, for consulting services with the Crime Victim Advocate Program. This contract is also part of the federal Rural Domestic Violence grant from the Office of Justice Programs. The total amount shall not exceed \$800.00. The term will be July 1, 2003 through August 31, 2003. All other terms and conditions are set forth therein.

Agreement – The Commissioners signed an Agreement between the Missoula County Youth Detention Center and Missoula County Public Schools for the provision of one FTE certified teacher for the continuation of instructional services for the Youth Detention Center, as required by statute. The term will be June 30, 2003 through June 1, 2004. The County will provide up to \$60,000 for the incurred operational costs; the estimated total budget is \$50,482.32. The document was returned to Marlene Thompson in the Sheriff's Office for further signatures and handling.

Board Appointment – The Commissioners approved and signed a letter, dated July 7, 2003, to Jacqueline Cohen, Lolo, Montana, confirming her appointment as an “alternate member” of the Lolo Water and Sewer (RSID 901) Board. Ms. Cohen’s term will run through June 30, 2006.

Other items included:

- 1) A discussion was held regarding the Mullan Sewer Loan with DNRC. No action was taken.
- 2) A discussion was held regarding a future meeting with Sanders/Mineral Counties’ Commissioners concerning Milltown. No action was taken.

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

### WEDNESDAY, JULY 2, 2003

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

#### CHIEF ADMINISTRATIVE OFFICER MEETING

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

Agreement – The Commissioners signed one (1) Sanitary Sewer Grant Program Agreement for Partial Assistance to Owner-Occupied Households Secured by Real Property, dated June 30<sup>th</sup>, 2003, with Heather Cling, 560 Colorado Avenue, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. All sewer development fees and on-site connection costs and fees are as set forth therein.

Lease – The Commissioners signed a Lease Agreement Extension, dated July 2, 2003, between Missoula County and Barbara A. Frey and Charles H. Frey, for the lease of property owned by the Freys, which is located in the Ninemile area. Missoula County has had a 20-year lease on this property (used for storage) and is renewing it for five more years with the option to buy at the end of those five years. The rental sum is \$3,000 per year for five years, plus the amount of any increase of the property taxes on the parcel over the current rate, which is \$10.75 per acre.

Letter – The Commissioners signed a letter, dated July 1, 2003, to Montana’s Congressional Delegation (Messrs. Baucus, Burns & Rehberg), stating their concern regarding the termination of the Basic Needs Assistance Program by the Social Security Administration. The Commissioners asked the Delegation to intervene and help find a way to keep relevant Montanans from falling through yet another gap in the social-service safety net.

Other items included:

- 1) The Commissioners reviewed and approved certain one-time Budget 2004 enhancement requests for the following:
  - a) Enhancements paid with Departmental Review: Library, Aging Services, OEM/9-1-1, Road/Bridge, Risk, Telephone Services, Elections, Central Services;
  - b) Financial Administration Enhancements: Legislative Initiative (using existing capacity), RMS Consultant (remainder of FY ’03 appropriation), Building Codes Consultant;
  - c) Multi-Year Enhancements: Courthouse 4<sup>th</sup> Floor Remodel, Communications Backbone; and
  - d) Other Enhancements: Room 201 improvements, Volunteer Board City-County Picnic, Fair Bleachers, Boiler.

Enhancement item details and amounts can be found in the Budget 2004 File located in the Office of the County Commissioners.

#### PUBLIC MEETING – July 2, 2003

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Jean Curtiss. Also present were Commissioner Barbara Evans, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall and Public Works Director Greg Robertson. Commissioner Chairman Bill Carey was delayed in traffic.

#### Pledge of Allegiance

#### Public Comment

Derek Goldman read his prepared statement regarding fireworks: *I live in East Missoula and for a week now, I’ve been listening to the discharge of fireworks almost 24 hours a day. Indeed, they can be heard throughout East Missoula. Last night I was woken up at 2:30 in the morning and was forced to call the Sheriff’s to request a deputy make a visit out here. I’m as much of a fan of the Fourth of July as anyone, but I don’t need to listen to the sound effects of the holiday every day for two weeks leading up to it and, God knows, how long afterwards. Many of the neighbors I’ve been in contact with are also upset with the constant barrage of noise and the effect it has on our pets and younger children. Furthermore, a popular spot for kids to gather to shoot off fireworks is on the Deer Creek Road bridge, where I have seen them shooting them into the Clark Fork River. The beginning of frequent discharge of fireworks coincided with the opening of the Great Grizzly fireworks stand in the Conoco truck stop parking lot in East Missoula, located adjacent to a residential neighborhood. I believe this retailer is providing most of the fireworks that are being discharged in the surrounding neighborhood. I’m currently investigating the operating permit of the retailer. Although I recognize that fireworks are legal in East Missoula, I believe that the presence of this fireworks retailer poses a nuisance to the community and that the permit should not have been issued for this location. It is incompatible with the high density neighborhood. Although East Missoula is not part of the city, per se, it has all the characteristics of an urban area,*



*including high density residential, families and an elementary school. I request that the County immediately suspend the permit for the Great Grizzly fireworks stand and amend the County regulations to prohibit the discharge of fireworks in East Missoula on days other than the Fourth of July.*

Mike Sehestedt stated that the County Commissioners don't have the power to regulate the discharge or sale of fireworks. The County has taken it upon themselves to utilize zoning and the fire codes, where applicable in rural fire districts, to impose some restrictions on retail sale. However, if an area is zoned commercial or unzoned and the retailer meets the rather minimal fire code standards for exits and fire extinguishers, that uses the total of the County's regulatory authority. The County isn't like the City, they do not have general legislative powers, they only have the authority that the Legislature sees fit to specifically grant the County. In the case of fireworks, it is pretty limited. Some of the problems, late night discharge of fireworks, can be addressed by the Sheriff's Office under disorderly conduct. There may be other remedies depending on a particular situation, discharge near enough to threaten or cause injury to people is prohibited by State law. State law doesn't even prohibit minors from possessing fireworks for the purpose of discharging them, it just prohibits possession for sale or distribution. Fundamentally, this is a Legislative problem in that the County doesn't have the ability to do much about fireworks.

Commissioner Evans stated that the only thing the State Legislature gives the County the power to legislate is dogs.

Mike Sehestedt stated the County can also deal with community decay within a very limited definition.

Derek Goldman asked who gives out permits to fireworks stands.

Mike Sehestedt stated that someone must meet zoning compliance, then a permit is issued, based on the County's limited ability to enforce zoning. If the area is not zoned against commercial use, the County is obligated to grant the permit if the applicant has suitable fire extinguishers and exits. He is fairly sure that Dixie's Diner and the truck stop are zoned commercial. Again, the authority is very limited and made up from some other sources. It was done so that at least the County would know where and who had permits to sell fireworks and keep them from being set up in residential neighborhoods.

Derek Goldman asked about the discharge of fireworks.

Mike Sehestedt stated that was governed by the State. Fireworks are prohibited in State parks, recreation areas and forests. The discharge of fireworks from or toward a vehicle is prohibited. Discharge is also prohibited in a manner that threatens injury to people, animals and property. It is a fairly limited list. Complaints have been received from many areas so he is very familiar with the statute. There are very limited tools to deal with the problem and there is nothing more the County can do until the Legislature sees fit to allow a broader local regulation of fireworks. He suggested that Mr. Goldman speak with his local legislative representative. He was not unsympathetic to Mr. Goldman's problem, everyone lives with the problem and even living in the City is not that much protection.

Commissioner Curtiss stated that the Board receives many complaints every year and are not unsympathetic to the problem, but they have no authority to deal with the nuisance.

Chairman Carey arrived at 1:37 p.m. and assumed control of the meeting.

#### **Routine Administrative Actions**

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$443,926.64. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Mike Sehestedt stated for the record that a copy of the routine administrative items was available for inspection in the red folder on the table with the agendas.

#### **Hearing: Annexation to Frenchtown Rural Fire District – Petty Creek Area**

Chairman Carey opened the public hearing.

Mike Sehestedt presented the background. The Frenchtown Rural Fire District is an established fire district serving the Frenchtown, Petty Creek and Alberton areas. They have received a petition to annex additional property in Petty Creek into the 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 on Attachment 'A' of the petition, it is rather lengthy so he would not read the entire description. The Frenchtown Rural Fire District Board recommends the Board of County Commissioners accept the annexation. The purpose of the hearing is to hear protests, if any, to the proposed annexation.

There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request for annexation into the Frenchtown Rural Fire District the area described on Attachment 'A' of the petition. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### **Hearing: Canyon East Subdivision and Rezoning (141 Lots on 15.08 acres) – Wheeler Drive**

Chairman Carey opened the public hearing.

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

This is a proposal from Wesmont Builders/Developers to create the Canyon East Subdivision and Special Zoning District. The subdivision has 138 residential lots and 3 live-work lots on a 15.08 acre parcel. The property is located on the eastern edge of the Canyon Creek Village Subdivision and PUD zoning district which was approved by the County Commissioners in March, 2001.

The property is located on a portion of Lot 1 of the Green Acres #2 Subdivision, south of Interstate 90, north of Expressway and is accessed from Wheeler Drive and two roads that were approved with Canyon Creek Village, Chesapeake Way and Bourdeaux Boulevard.

The applicant has proposed a special zoning district for the Canyon East Subdivision. It is a "Traditional Neighborhood Design" development. Design standards are contained in a provided set of "Architectural Guidelines" that will be enforced by an Architectural Control Committee through the Canyon East Homeowners Association.

The applicable plans are the 1996 Butler Creek Plan and the 1998 Missoula Urban Area Comprehensive Plan Update. The property is designated "Urban Residential – six dwelling units per acre" and is located in the Primary Urban Growth Area. The proposed gross residential density of this zoning district is 9.35 dwelling units per acre.

Sub-district No. 1 is the "Single Family Detached Homes," which are on minimum 2,880 square foot lots. Sub-district No. 2 provides for "Bungalow Homes," which are small homes on minimum 2,200 square foot lots. The proposed zoning Sub-district No. 3 provides for "Townhomes," which are small homes similar to the Bungalow Homes or "Multi-Dwelling Buildings," which allow up to three dwelling units in a single structure. These will have a minimum lot width of 18 feet and no minimum lot size. The proposed zoning Sub-district No. 4 provides for "Live-Work" units on Lots G-16 through G-18. These units will be developed with neighborhood commercial uses on the first floor (and second floor in the case of a three story structure) and residential units above on lots that are a minimum of 2,800 square feet.

Staff recommended approval of this rezoning request subject to a condition of approval that the zoning be amended as indicated in Attachment A. Staff recommended approval of the subdivision, subject to 18 conditions. The applicant is requesting a variance from the requirement for a minimum 36 foot wide road width for Wheeler Drive. County Public Works and City Engineering recommended that the applicant provide a road section to allow for 46 foot wide pavement width with curbs and gutters on the north side in an 80 foot right-of-way because of the level of traffic expected. Staff recommended this configuration be required as a condition of approval.

The applicant is proposing 5 foot sidewalks with a 4 foot landscaped boulevard on Wheeler Drive and is requesting a variance from the requirement. Staff recommended denial of the variance request and recommended a condition that the developer provide 10 foot landscaped boulevards as required in the Subdivision Regulations.

The applicant is proposing a 26 foot wide road with curb and gutter on the west side of Storehouse Way and is requesting a variance from the requirement that the road be 32 feet wide in a 60 foot right-of-way. County Public Works and City Engineering commented that Storehouse Way will need to be a 32 foot wide public road in a 60 foot right-of-way because of the level of traffic expected. Staff recommended denial of the variance request and that the necessary road width be required as a condition.

The applicant is proposing 5 foot sidewalks with a 4 foot landscaped boulevard on Storehouse Way and is requesting a variance from the 10 foot boulevard requirement. Staff recommended approval of the variance request and recommended a condition that the developer provide 6 foot landscaped boulevards, less than the requirement but more than proposed.

The subdivision plat includes an interior grid street pattern of 29 foot wide streets in a 54 foot right-of-way with parking and boulevard sidewalks on both sides of the street. Subdivision Regulations Article 3-2(3) requires that these roads be a minimum of 26 feet in a minimum 40 foot right-of-way. The street system design connects with existing streets to the west and allows for connections to future development on the east boundary of the subdivision.

In the agency comment letter from County Public Works and at a meeting on June 3, 2003, Greg Robertson commented that the provision of an alley at the west end of Deveraux Place, Martindale Way and Addington Drive was unacceptable because it was functioning as a street. To insure sufficient circulation of snow plows, road equipment and vehicles, additional width was necessary. It is designed as an alley but really functions as a street. A street width of 24 feet was recommended as well as an additional 11 feet for boulevard sidewalk improvements on the east side of the street. Staff recommended a condition that the public access easement be increased to 35 feet for this recommended street and that the pavement width be 24 feet.

A no-access strip placed along the southern boundary of the subdivision with the exception of Storehouse Way and the elimination of the alley west of Lot H1, Block 8, was recommended by Steve King, City Engineer and agreed to by Greg Robertson. Staff recommended these as conditions of approval.

Curt Belts, Missoula Rural Fire District, expressed concern regarding the roadway access for emergency vehicle operations with the proposed street widths and noted that the roadway design would be acceptable if parking was limited to one side of the street. Staff recommended a condition that a parking plan be reviewed and approved by the Missoula Rural Fire District prior to final plat approval.

County Subdivision Regulations require the subdivider dedicate to the County parkland or cash-in-lieu of parkland totaling 11% of the lands proposed to be subdivided into lots one-half acre or smaller in size. The parkland dedication required for this 15.08 acre subdivision with 8.96 acres of net lotted area is 0.99 acres. The applicant is proposing no parkland or cash-in-lieu of parkland. The applicant is requesting a parkland/cash-in-lieu waiver based on the parkland dedicated with Canyon Creek Village subdivision to the west of this proposed subdivision. The waiver from the requirement to provide parkland or cash-in-lieu of parkland requires that nearby parkland is: a) sufficient to meet the needs of the residents of the development, and 2) any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication requirements.

The distance from the townhouse lots to the central park in Canyon Creek Village is approximately 7 blocks, or slightly more than one-quarter mile. Though the central park may be sufficient to meet the needs of the residents in the larger lots at the north end of the subdivision, the park in Canyon Creek Village does not appear sufficient to meet the needs of the residents in the smallest lots at the south end of the proposed subdivision.

The combined parkland dedication requirement for Canyon Creek Village and Canyon East would be 2.95 acres. The total parkland dedicated with the Canyon Creek Village subdivision was 4.97 acres. The parkland dedication for the Canyon Creek Village subdivision, excluding the common area along Expressway used as a detention pond not set aside for park and recreational purposes, totals 2.74 acres. If the common area along Expressway used as a detention pond is excluded from the parkland dedication requirement for Canyon Creek Village and Canyon East combined, there would be a deficit of 0.21 acres of parkland.

The County Park Board recommended that the developer include two pocket parks, of approximately 0.75 acres each (1.5 acres total), one pocket park located in the townhouse area near the southern end of the property and one park in the northern area, near Chesapeake Way. The County Park Board was aware of the excess amount of parkland dedicated with Canyon Creek Subdivision, but they look at each subdivision individually. Staff is recommending a condition that a 0.21 acre (9,148 square foot) park be dedicated with the Canyon East subdivision in the vicinity of Blocks 7 and 8, where the smallest (townhouse and bungalow home) lots are located.

The applicant used the comparison of Bonner Park as similar to the central park in Canyon Creek Village; however, Bonner Park is 5 acres rather than 2.5 acres and the surrounding lots are 40-60 feet wide and 130 feet deep as opposed to the 18-33 feet wide and 80-90 feet deep. As another comparison, Lowell Park on the Westside is a 2.5 acre park that is a few blocks from Little McCormick Park, which is one-half acre in size. The parks compliment each other and serve different needs within the neighborhood.

At their regularly scheduled meeting on June 17, 2003, the Missoula Consolidated Planning Board voted unanimously recommending approval of the subdivision proposal with the deletion of three of staff's recommended conditions:

14. A 0.21 acre park, located in the vicinity of Blocks 7 and 8, accessible from Deveraux Place shall be dedicated to Missoula County, subject to review and approval of the County Park Board, prior to final plat approval.
15. Improvements to the park areas shall be installed concurrently with the approved subdivision phase where the improvements are located. An RSID/SID shall be created for maintenance of the park areas. A development agreement shall be filed that states the developer shall provide all maintenance of the park area until enough development to support the Homeowners Association and RSID/SID has taken place. The development agreement shall be filed prior to final approval of Phase I, subject to the County Attorney's Office approval.
17. The developer shall provide a parking plan that will utilize a combination of "no parking" signs and curb striping to allow free access for emergency response vehicles. This plan shall be subject to the review and approval of the Missoula Rural Fire District prior to final plat approval.

Subsequent to the Planning Board meeting, the applicant requested a change to Attachment A allowing no side yard setback on the bungalow homes, rather than 5 foot side yard setbacks as proposed. Staff is recommending the zoning district be modified to allow the lesser setback and has created an amended Canyon East Special District Standards which is Attachment A-1 of the Board of County Commissioners Request for Commission Action. There has been no additional agency comment or public comment since the Planning Board meeting.

Commissioner Curtiss asked for an explanation of the bungalow lots, which could allow for two houses. Did that mean two houses on each lot, a duplex.

Dale McCormick stated it would be a duplex that would straddle the lots, it would be a townhouse. Each unit would have a separate parcel but a common wall between them. The overall density of the development is 9.35 dwelling units per acre. However, the net density on the smallest lots could be 27 units per acre.

Nick Kaufman, WGM Group, Inc., stated he was the developer's representative for Wesmont Builders/Developers. Perry Ashby, the owner of Wesmont Builders/Developers and Scott Hollenbeck, the marketing agent, were also present. He thanked Dale for his time and careful review of this project, along with Greg Robertson and Erik Dickson from the Public Works Department. He wanted to clarify a point in the staff report. He and the developers met at the Office of Planning and Grants with Steve King, Greg Robertson, Dale McCormick and Mark Bellin. He wanted to make note of the conditions addressing the widening on Storehouse Way and Wheeler Drive. Condition 6 addresses Wheeler Drive and Condition 7 addresses Storehouse Way. The developers will work with Greg to solve the "alley" issue along the west side of the property line so there is adequate service vehicle access or construction of an appropriate half-street. The drawing displayed shows Canyon Creek Village, a traditional neighborhood design, and attached to it is a drawing of Canyon East. Canyon East is being platted two years after Canyon Creek Village but it is the same developer and same subdivision. This 15 acres was not available two years ago. He does not disagree that each subdivision has to be looked at individually, but these two are integral to each other and part of the same neighborhood, connectivity, design, landscaping, sidewalks, etc. For all intents and purposes, these are part of the same neighborhood even though they are being reviewed separately, just as the 12-15 different subdivisions around Bonner Park form the same neighborhood. Connectivity is being created with streets and alleys so if there is a fire or medical emergency, there are many different points of access for emergency vehicles, so the wider, suburban style streets are not necessarily needed. He then showed a Power Point presentation. He began with a slide of the conceptual master plan for Canyon Creek, modified somewhat because the conditions of final plat approval have been met. Everything south of the park is being built out. The subdivision has been tremendously successful. There were 240 units approved including the multi-family at the north end; 91 homes have been sold. The project has developed to closely match the architect's rendering at the time of subdivision review. As Dale mentioned, Canyon East has three distinct home styles; single family detached, bungalow (two-unit townhomes in a bungalow style), and townhouses adjacent to Wheeler Drive. The townhouses are located to form a barrier from the light industrial zoning adjacent to the proposal. Traffic calming bump-outs are not included as they were in Canyon Creek Village. Those are causing some difficulty with road maintenance equipment and have been eliminated in this

subdivision. Both types of townhomes being proposed have usable front porches over six feet wide and/or balcony decks. The outdoor living space is usable and an important part of the amenity and usability of the yard in this type of traditional neighborhood design. Slides were shown of homes that have been constructed and are now occupied at Canyon Creek Village, showing the usable front porch. The concept for the bungalow units was shown, there is one dwelling unit per lot but two dwelling units per building. A slide from inside Canyon Creek Village, looking south, showed the front yards, front porches, landscaped boulevards and street trees. The side yard set back in Canyon Creek Village was shown looking through three tiers of homes. The setback is wide enough that a car could easily drive through it. The outdoor play area behind an existing home was shown, with a garage, a wading pool, a swing set, etc. Each homesite provides a usable back yard, a front porch outdoor living area, landscaped boulevards that separate the traffic from the homes, street trees, lots of connectivity and a large central park. Interstate Park 10, which is proposed to be developed with the Missoula Development Park as part of the buy/sell agreement for Reserve Parcel B, could have been included in the park dedication for Canyon Creek Village but was not and 70% more parkland was dedicated than what was required. Dale mentioned the detention ponds area several times in his presentation. These detention ponds are not wet nine months out of the year. The only time they have water in them is when there is a 10 or 15 or 20 year storm event. They are not designed as ponds that hold water; they retain water for a time which then passes through. They are wholly adequate for green space, similar to Playfair Park or the park on 39th Street. The outdoor living space cannot be overlooked either. Current residents of Canyon Creek Village like the streets, the ability to talk to and meet their neighbors, etc. Another slide was shown of a backyard, again, it may be small but there was a swing set, a storage shed, a picnic table, a barbeque and dog house which seemed to fit quite nicely. This home doesn't have a garage, but it has a two car parking area where a garage could be built. Dale mentioned that it was seven blocks from the townhome lots to the central park in Canyon Creek Village. He disagreed with that calculation. Some of what Dale was considering a block was actually only a half-block. His calculation was only three blocks to the park, one-quarter mile walking, distance less than five minutes. All the research concludes that the walking distance from a village center for a walkable community is one-quarter mile. The park dedication in Canyon Creek Village exceed the requirements of State law by 70%. There is nothing in the parkland requirement that says that if there is stormwater in an area briefly after a storm that it cannot be used for parkland. The proposal for Canyon East meets subdivision regulations. In 1975, the Comprehensive Plan designated this area at six units per acre. That designation was repeated in the 1986 and 1998 updates. This land has always been designated for six units per acre. The land is also within the Primary Urban Growth Area which allows for higher density. This community has adopted the Consolidated Housing Plan which identifies housing needs in the community. The Ad Hoc Housing Task Force recommends that housing needs identified in the Consolidated Plan serve as criteria for future developments when reviewed by the Office of Planning and Grants. The only thing that is being argued about in this 141 unit development is whether or not a subdivision that meets the parkland requirement in the zoning regulations, and which has more than 70% additional land in dedicated parks than the subdivision regulations require, needs an additional park. The additional park would take out four lots, four dwelling units, which the Consolidated Housing Plan says are needed. The cost of the lost lots and maintenance of the park will be added to the cost of each home. The adopted policies and regulations say that much parkland is not needed in this subdivision and the housing is needed. Each townhome will have a backyard and front porch and will be within a five minute walk from a 2.5 acre park. Bonner Park is 5 acres but serves an area more than four times larger than this. The Planning Board recommended that Conditions 14 and 15 be deleted, which relate to the parkland. He again thanked the Commissioners and the staff for their time and hard work. He hoped this would be approved as recommended by the Planning Board. Scott Hollenbeck would speak briefly about the costs associated with trading four housing units for a small park and its maintenance.

Scott Hollenbeck, Properties 2000, stated that he has represented the developer throughout the process of start up and marketing of Canyon Creek Village. He distributed a handout which shows the applicable costs if these four lots are removed and used for parkland. He thanked the Board for their vision and foresight to approve Canyon Creek Village almost exactly two years ago. It may be the most successful subdivision in the history of Missoula County. It does not have high priced homes, they are striving to achieve the lowest priced, affordable, most quality built homes in Missoula. If four lots are lost to parkland, the developer will lose approximately \$35,000 per lot in sales price, approximately \$10,000 for improvements, and a guesstimate of \$2,000 per year for maintenance. That is approximately \$150,000 in lost revenue to the developer. If that \$150,000 is divided by the 136 remaining lots, that comes to \$1,103 per lot in lost revenue. This will be an added cost to each homeowner. If the interest is added to the \$1,103 at 5% for 30 years, over a period of 30 years it will cost 136 homeowners about \$2,131 more to own a house in Canyon Creek Village. He harkened back to the affordability issue. Costs have been rising across the board in all facets of development. Two years ago the first building permits were purchased for the first four model homes at a cost of slightly less than \$400 each. Currently, a building permit costs \$1,400 for the same house on the same sized lot. They are trying to keep those costs in check and continue to offer affordable housing. He hoped the Board would consider Nick's request to delete the conditions relating to the park.

Commissioner Evans wanted to know why parkland was being required over and above what was required in the regulations.

Perry Ashby stated that he represented Wesmont Builders on this project. They are committed contractually with the County to expend a minimum of \$50,000 in park improvements in the central park. It is anticipated that will include grading, top soil, landscaping and irrigation. There is a proposal for a community center but they have not figured out yet what they will actually do. He is thinking seriously about a community center, a place where a nursery or wood shop could be located, a general meeting place, but that has not been finalized yet.

Commissioner Evans asked if the roads proposed meet regulations.

Colleen Dowdall stated that there are findings in the report that the 29 feet meet the requirements.

Dale McCormick stated the roads are actually three feet wider, at 29 feet, than the 26 feet required in the regulations.

Chairman Carey stated that the road issue had been resolved. The main issue now is the park.

Commissioner Curtiss asked if Bourdeaux Boulevard goes all the way through both subdivisions.

Nick Kaufman stated Bourdeaux Boulevard does go all the way through both subdivisions. He also showed what is happening on the 45 acres adjacent to the east of Canyon East. Currently, he is working on a master plan for David Edgell and Colin Bangs for the 45 acres to the east. The time frame is to try and get it submitted to OPG by next week. There is not guarantee it will be approved or built, but what is being proposed in that subdivision is another approximately 2.55 acre park in the center and Bourdeaux Boulevard would connect all the subdivisions as well. He added a personal story about purchasing his first house when he was working for Missoula County. He found a place in El Mar Estates. When he went to qualify for a loan, he had a \$10 a month life insurance policy that he purchased his first year in college. He did not qualify for the loan because of that life insurance policy. The loan officer granted the loan anyway and he was maxed out for a few years until he got a raise. These subdivisions are designed down to the square foot. He would not want someone to be told they didn't qualify for a loan because of an additional \$2,131, but if they had qualified, they would have a nice little park to use. He would rather people qualify for a loan and have a house in the subdivision with a wonderful park within walking distance.

Commissioner Curtiss asked if the townhomes would have any front yard other than the boulevard.

Nick Kaufman stated they would have a front yard.

Commissioner Curtiss asked if the townhomes would have any back yard.

Nick Kaufman stated that the setbacks for the townhomes is the same as the single family homes.

Commissioner Curtiss stated that the 18 foot wide lots would have a garage in the front. How would there be room for a front porch too.

Nick Kaufman stated these homes will have a deck on the second floor which goes out over where the garage is located below. The deck provides the outdoor living area and also provides the shadow line so the garage doesn't stand out. All homes with a garage front load have a larger back yard. The outdoor living area for the townhomes adjacent to Wheeler Drive have a larger back yard.

Dale McCormick stated the minimum front yard setback is 7 feet and the minimum rear yard setback is 3 feet for the townhouse lots.

Nick Kaufman stated the lot depths for the townhomes in Canyon East are the same as they are in Bentley Place and the single family homes in Canyon Creek Village. The townhomes are not much deeper than the single family homes.

Commissioner Curtiss stated there would not be a side yard.

Nick Kaufman stated that in the townhomes, the most they can construct is 3 units per building. The 18 foot width is the middle unit in each building. There would be three townhomes in each building and a small space between each building. The distance between buildings would be the same as the single family units.

Chairman Carey stated that during Planning Board, the developer said he might be willing to do some improvements to Red Fern Park.

Nick Kaufman stated that he and Perry have discussed this a lot. Dale makes some very good points and he could understand the struggle with the park issue. There is an area between the Canyon Creek Village lots and Expressway which is just starting to be graded. Some improvements could be installed in that 150 foot wide, 300 foot long area. Storm water does not stay in this area, it is detained then moves along.

Chairman Carey stated that he was more interested in Red Fern park. He did not think toddlers should be encouraged to go to a park that might flood from time to time or is too close to Expressway.

Nick Kaufman stated that the only time there is water in that area is immediately after a thunderstorm. A suggestion was to add additional playground equipment, additional picnic tables, more landscaping, etc.

Chairman Carey stated that Dale makes some very valid points about parkland but he is also concerned about the loss of housing. A quarter mile isn't a great distance to walk to a park. He hoped that providing a few more incentives to go to that park might be a good compromise.

Scott Hollenbeck stated that the Homeowners Association maintains the park and is responsible for the liability insurance policy. They are in the first stages of organizing a Homeowners Association. The cost of liability insurance could be significantly increased depending on what kind of equipment is installed.

Nick Kaufman stated there are a lot of great passive recreation options for the park. They could include a depressed area to provide a seating wall, areas could be separated with hedges to create more private, quiet seating areas, picnic tables, etc. Bonner Park could be used as an example. It is a great park for many reasons. It has a boulevard sidewalk all the way around it; so does this park. Bonner Park has boulevard trees; so does this park. Bonner Park has horseshoe pits which don't carry a large liability risk. Bonner Park has a tennis court and basketball court, which they won't do in this park. Bonner Park has a volleyball court; they could create a sand area to be used as a volleyball court and would also provide a sand box area for younger children. There are lots of things that can be done that won't significantly increase the liability issues.

Commissioner Evans stated that if the developer were to include all these amenities, how much money would that cost? Would that not again add to the cost of houses?

Perry Ashby stated that he was volunteering to increase, by an additional \$15,000, to the \$50,000 he originally agreed to spend for park improvements, for a total of \$65,000. The money would cover grading, grass, irrigation, etc., and any

surplus would be used to provide recreational amenities. He will also speak with the insurance agent to see if they can get beyond the liability issues.

Chairman Carey stated that he visited Canyon Creek Village today at lunchtime. He commended everyone for creating a space that feels good. The residents are showing a pride of ownership in their homes. Kids were playing on the sidewalks, it felt like it would be a very livable place for a long time. He can see staff's point, although this is more a less a continuation of Canyon Creek Village, as an individual subdivision, it has no parks. He would like to see a way to get around that. He appreciated Perry's offer to increase the amount he will spend on improvements to the existing park. He did not want people living in Canyon East to feel like second class citizens, compared to the people in Canyon Creek Village who have a nice park nearby. He again commended the developers. This is a very nice place and will continue to be so for years to come.

Commissioner Curtiss stated that she understood the Homeowners Association will be joint between the two subdivision, so the people in Canyon East will have some input on what happens at the park.

Perry Ashby stated the intent was to tie the two together. The park area is maintained and owned by the Homeowners Association.

Nick Kaufman stated when the area is owned and maintained by the governing body, it is referred to as a park. When it is owned and maintained by a Homeowners Association, it is called a common area. The public will not be restricted from use of this park.

Commissioner Evans asked if the recommendations for denial and/or approval of the variance requests had changed any based on the discussions today.

Dale McCormick stated that the recommendations for denial and/or approval of the variance requests as noted by staff were not changed by the Planning Board, so nothing has changed regarding the variance requests. The only items that came up at the Planning Board were Conditions 14, 15 and 17. Conditions 14 and 15 were related to the park issue.

Nick Kaufman stated the developer does not have a problem with the recommendations for the variance requests or the conditions coming from the Planning Board.

Commissioner Curtiss asked about Condition 17 and whether the Fire District had a problem with road width.

Bill Lindstrom, Missoula Rural Fire District, referred back to Curt Belts' comment letter, which said that whatever is done in the subdivision, roads still needs to maintain a 20 foot horizontal clearance. That is the minimum width that emergency equipment can operate in.

Commissioner Evans stated that requiring a parking plan was not necessary. What is necessary is that fire hydrant locations be approved and the driving width be approved.

Bill Lindstrom stated that he would agreed as long as what is approved gives them 20 feet of clearance for operations.

Commissioner Evans stated that 29 feet is in excess of what the regulations require.

Greg Robertson stated it would depend if parking was to be on-street or off-street. The concern expressed is that there be adequate street width to accommodate parking and not reduce snow removal or emergency vehicle services. When a snow plow with a 14 foot blade is bouncing down a street, it is difficult for the operator to manage those things and still do a good job, not bury parked cars, damage them, etc. The width proposed is adequate as long as there is no parking on the street.

Commissioner Evans stated that the regulations were adopted after many meetings and lots of discussion and they are what developers rely on when submitting plans. For a developer to be told that the rules don't really provide what is needed is confusing. It is not fair to tell a developer that the roads meet regulations but that isn't good enough.

Greg Robertson stated the standards are written in a certain way. If off-street parking is accommodated and there are adequate standards for that, then the road width can be narrowed. Otherwise, if parking is accommodated on-street, the width must be expanded to allow for maintenance and emergency response. Missoula County has already paid out claims for Canyon Creek Village for damage done by snowplows. Claims will be paid fairly routinely because the narrow roads are built to standards but the reality of equipment capabilities is not factored in.

Commissioner Evans stated that that in the City, road cleaning and leaf pickup schedules are posted, as are snow routes. That could be possible here without going to the extra expense of wider roads that are not required in the regulations.

Greg Robertson stated that the County plows all their roads, they don't discriminate, they prioritize and eventually, all roads are plowed. If that is to continue, accommodations need to be made. The County has the option of declaring snow emergency routes, but that creates another problem of tagging and towing vehicles to get them out of the way. He would rather that parking be accommodated either on-street or off-street and provide the necessary adequate road width.

Nick Kaufman stated that everyone is heading toward something that works. In a traditional neighborhood design, cars are typically parked in the alley. The Growth Management regulations had no discussion about street standards only if cars weren't parked on the streets. Even though in this traditional neighborhood design there is alley parking, some on-street parking needs to be provided. An alternative used in severe snow states is that every Sunday, parking is switched from one side of the street to the other. In Hellgate Meadows, the parking plan has created severe sign pollution, the streets are striped to allow parking on only one side for 60-80 feet, then alternate parking to the other side of the street for 60-80 feet, with no parking signs all over the place. There is an answer to this somewhere. Perry suggested letting him do the narrower street and if, in a year, it is obvious it doesn't work, then go to some kind of parking plan as suggested by staff. Everyone is frustrated with being caught in the middle. In the next proposal, they will be suggesting 36 foot wide



streets to avoid this hassle. Cars will drive faster but parking can be allowed on both sides of the street. That solves the problem for Greg and Chief Lindstrom, but raises concerns for OPG because of the increased speed.

Chairman Carey asked if Condition 17 was acceptable to the developer.

Nick Kaufman stated it would be better if Condition 17 was deleted. The Board could either leave it in or take it out. Another meeting will be held with Greg and he could guarantee that a solution would be found at that meeting. If the solution is different than what is required in Condition 17, they will request that the condition be changed to conform with the solution worked out. Everyone is tired of this problem.

Colleen Dowdall stated that when in doubt, fall back on the regulations. The regulations have language for when no parking would be required and that is on a short court when the improved roadway is allowed to narrow to 20 feet. Varying street widths are also addressed depending on whether or not an alley is provided. In an effort to encourage alleys as a place to provide parking and the neighborhood design, the idea was to require narrower streets because with the alley people would be less likely to park on the street. This was an acknowledgement that enforcing no parking on the street is very difficult. If garages, driveways and alleys are provided, parking would not be solid on the street. The regulations allow 26 feet with no restrictions on parking.

Chairman Carey stated that is what is happening right now in Canyon Creek Village. There are a few cars parked on the street, but not many.

Perry Ashby stated he was involved with Colleen and others in putting together the Growth Management Standards. National guidelines were used to determine street widths. The street widths proposed are actually in excess of national guidelines. It would be inappropriate to have a different parking concept for Canyon East than for Canyon Creek Village. All the properties can option to purchase a 2 car garage. If a garage is not purchased, then they have a paved, two car parking pad. In all cases, residents park in the back; those cars on the street are typically visitors and are not filling the entire street. Again, his reasoning is to protect the consumer and not have strange parking restrictions.

Commissioner Evans stated she did not want to do anything that would add to the cost of the houses. There is not enough affordable housing in this community.

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

Commissioner Evans moved that the Board of County Commissioners deny the variance request from Subdivision Regulation 3-2(3)(B) requiring a 36 foot wide road width for Wheeler Drive; deny the variance request from Subdivision Regulation 3-2(3)(B) requiring a 32 foot road width for Storehouse Way; and deny the variance request from Subdivision Regulation 3-2(8)(A) requiring 10 foot landscaped boulevards with 6 foot sidewalks on Wheeler Drive, all based on the findings of fact in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Subdivision Regulation 3-2(8)(A) requiring 10 foot landscaped boulevards with 5 foot sidewalks to allow 6 foot landscaped boulevards on Storehouse Way; and approve the variance request from Section 3-3(1)(E) of the Missoula County Subdivision Regulations to require no lot have a width less than 60 feet or an average depth greater than 3 times its average width, both based on the findings of fact in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the Canyon East Subdivision, based on the findings of fact in the staff report and subject to the recommended conditions of approval, deleting conditions 14, 15 and 17 as recommended by Planning Board. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans stated that she was comfortable with deleting Condition 17 and she had no doubt that a satisfactory outcome to the parking/street width issue would be reached between the developer, Public Works, Rural Fire and OPG. She also recognized Perry Ashby's offer to contribute an additional \$15,000 to improvements to the park in Canyon Creek Village.

Commissioner Evans moved that the Board of County Commissioners rezone the property generally described as a portion of Lot 1, Green Acres, Phase 2, and a portion of Canyon Creek Village, Phase 3, more particularly described by the metes and bounds description contained in the submittal packet, from "C-RR3" (Residential) and "Canyon Creek Village PUD" (Mixed Use) to "Canyon East Special Zoning District," based on the findings of fact and subject to the condition in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Perry Ashby stated that the Board has commended him on this development. He would also like to commend the Board for having the vision to approve Canyon Creek Village two years ago.

#### **Canyon East Subdivision and Special Zoning District Conditions of Approval:**

##### ***Rezoning Condition***

1. The Canyon East Special Zoning District standards shall be amended as indicated in Attachment A-1.

##### ***Subdivision Conditions***

1. The Canyon East Special Zoning District shall be adopted prior to final plat approval of Phase I. *Subdivision Regulations Article 3-1(1)(B)*.
2. The Phasing Plan on the submitted preliminary plat shall be adopted as shown. Phase I final plat shall be submitted for filing within one year of approval. Phases II and III final plats shall be submitted for filing within two years of approval. Phase IV final plat shall be submitted within three years of approval. *Subdivision Regulations Article 4-1(13), 4-1(17) and staff recommendation.*



**Airport**

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

"This property is within the Airport Influence Area and subject to the requirements of the Airport Influence Area Resolution." *Subdivision Regulations Article 3-1(2), 4-1(12) and Airport Authority request.*

**Roads**

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 constitutes assent of the lot owner to waive the right to protest a future RSID/SID for improvements, including, but not limited to, the installation of paving, drainage facilities, curbs and gutters, pedestrian walkways or bikeways to Wheeler Drive, Storehouse Way and all streets within the Canyon East 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(3)(E) and OPG recommendation.*

6. The developer shall provide a road section for Wheeler Drive to allow for a 46 foot wide pavement width with curbs and gutters on the north side in an 80 foot public access easement, centered on the existing easement centerline, subject to review and approval by Missoula County Public Works Department, prior to final plat approval. *Subdivision Regulations Article 3-2(3), County Public Works and City Engineering recommendation.*
7. The developer shall provide a road section for Storehouse Way to allow for a 32 foot wide pavement width with curbs and gutters on the west side in a 60 foot public access easement, subject to review and approval by Missoula County Public Works Department, prior to final plat approval. *Subdivision Regulations Article 3-2(3), County Public Works and City Engineering recommendation.*
8. The developer shall provide a 24 foot wide road in a 35 foot wide public access easement adjacent to the western frontage of Block 6 and Block 7 between Addington Drive and Deveraux Place, subject to review and approval by the Missoula County Public Works Department, prior to final plat approval. *Subdivision Regulations Article 3-2(3), County Public Works and City Engineering recommendation.*
9. A no-access strip shall be placed along the southern boundary of the subdivision fronting on Wheeler Drive, except the intersection with Storehouse Way, subject to review and approval by the Missoula County Public Works Department, prior to final plat approval. *Subdivision Regulations Article 3-2(3), County Public Works and City Engineering recommendation.*
10. The alley at the west end of Deveraux Place adjacent to Lot H1, Block 8, shall be eliminated. *Subdivision Regulations Article 3-2(1)(E), County Public Works and City Engineering recommendation.*
11. The developer shall petition for annexation into the Missoula Urban Transportation District prior to Phase I plat approval. *Subdivision Regulations 3-1(1), 3-2(1) and MUTD recommendation.*

**Pedestrian Facilities**

12. Curb, gutter, 6 foot sidewalks and 10 foot landscaped boulevard improvements shall be installed on the north side of Wheeler Drive with Phase I. *Subdivision Regulations Article 3-9(A), County Public Works and City Engineering recommendation.*
13. Curb, gutter, 5 foot sidewalks and 6 foot landscaped boulevard improvements shall be installed on the west side of Storehouse Way concurrently with the approved subdivision phase where the improvements are located. *Subdivision Regulations Article 3-9(A), City Engineering and OPG recommendation.*

**Fire**

14. Fire hydrant locations shall be approved by the Missoula Rural Fire District prior to final plat approval of Phase I. *Subdivision Regulations Article 3-1(6) and Rural Fire District recommendation.*

**Weeds**

15. The Covenants for this subdivision shall be amended, subject to review and approval by OPG and the County Attorney's Office, prior to final plat approval and shall include the following items:
  - A. The landowner shall maintain the property in compliance with Montana's County Weed Control Act and the Missoula County Noxious Weed Management Plan.
  - B. The landowner shall revegetate any ground disturbance caused by construction or maintenance with beneficial species appropriate for the site at the earliest appropriate opportunity after construction or maintenance is completed. *Subdivision Regulations Article 3-1(1), Missoula County Weed Board and OPG recommendation.*
  - C. The Covenants addressing Weed Management may not be amended or sections eliminated without the approval of the governing body. *Subdivision Regulations Article 3-1(10), County Attorney's Office and OPG recommendation.*

Chairman Carey stated the Board would take a 5 minute break.

**Hearing: Eight Acre Woods RV Park (28 Unit Major Subdivision for Lease/Rent) – Highway 93 North (just north of the Wye on Lady Slipper Lane)**

Chairman Carey reconvened the meeting and opened the public hearing on Eight Acre Woods RV Park.

Monte Sipe, Office of Planning and Grants, presented the staff report.

This is a request from Eight Acre Woods, LLC, represented by Paul Druyvestein of DJ&A, to subdivide a 3.83 acre parcel, legally described as a portion of Tract A-1-A of COS 3019 and Lot 5 of the Ram Addition, into 28 RV sites for lease or rent. The Missoula City-County Planning Board held a public hearing on this request on June 16, 2003, and recommended approval of the request as presented by staff. The property is located approximately two-thirds of a mile north of the Wye, south of Lady Slipper Lane and east of Highway 93 North.

The property is within the 1979 Wye-O'Keefe Creek Area Plan and the 1998 Missoula Urban Area Comprehensive Plan Update. Both plans designate the property as residential with urban type densities of 25 units per acre. The property is zoned C-C2 within the Valley West Community Development District. RV parks are conditional uses within this zoning district.

The proposal is to expand the existing Jim and Mary's RV Park (45 sites) for a total of 73 units on 8.48 acres. The Jim and Mary's RV Park was approved in 1984.

The topography of the site is relatively flat, with mainly grass and small deciduous trees on the north portion (existing RV Park area) and large mature conifer trees on the south (Lot 5 of the Ram Addition) where the proposed additional 28 units would be located. A small portion of the southwest corner of the site will require some re-grading for the proposed new drainage swale along the south property line.

Missoula County Subdivision Regulations limit the density of RV parks to 15 spaces per acre of the net site area. A total of 1.61 acres of Lot 5 of the Ram Addition is provided for the proposed 28 sites. A total of 4.65 acres of Tract A-1-A of COS 3019 is provided for the existing 45 sites. Both parcels together have an overall density of 11.7 RV sites per acre.

Because this proposal is an RV Park for Lease or Rent subdivision, at least one-ninth of the total RV park area is to be reserved for park or recreational activity. The calculated area required would be 0.43 acres. The applicant is proposing 1.44 acres of additional area for park or recreational space. A common Laundry/Shower facility is anticipated to the west of proposed Site 1.

Access to the property is from Highway 93 North onto Lady Slipper Lane to a private internal looped one-way road system within the RV Park. Lady Slipper Lane is an existing County maintained 28 foot wide paved road within an 80 foot right-of-way. No improvements are required or proposed for this road. Missoula County Subdivision Regulations Article 3-11(D) requires each RV park one-way street to be at least 15 feet wide. Internal access within the RV Park is proposed by the extension of three additional one way paved roads, 15 feet in width with 2 foot gravel shoulders on both sides. Thirty feet of total width is provided between the proposed pull-through RV unit sites.

County Public Works expressed concern over the proposed road design given the considerable weight of large RV's and stated that the provided typical road section will need to be re-examined and submitted to Public Works prior to final plat approval. Staff has recommended a condition in regard to Public Works comments. The road and parking space construction will require a permit from the Health Department.

Missoula County Subdivision Regulations Article 3-11(5)(B) and 3-11(5)(C) requires the recreational vehicle park developer to provide suitable drainage facilities for any surface run off affecting the park. County Public Works stated that the drainage proposal does not show drainage ditches, culverts, etc., to address how stormwater would be diverted to the proposed drainage basin location in the southwest corner of the property. Staff has recommended a condition in regard to Public Works concerns and the subdivision regulations. An existing 20 foot wide drainage easement is located on Lot 5 of the Ram Addition to transfer water from adjoining properties to the south. This drainage easement is proposed to be vacated and a new 20 foot drainage easement with a drainage swale will be provided at the south property line. Staff has recommended a condition to address relocation of this public drainage. There is also an additional 20 foot drainage easement that runs along the west property line as well as a 30 foot drainage easement along the east and north property lines of Tract A-1-A of COS 3019.

A community water and sewer system are proposed for the subdivision. Water lines are proposed to provide service connections to all sites from the water wells. Sewer lines are proposed to provide service connections to all sites and transfer to a septic and drainfield to be located in the west corner of the property. Fire protection will be provided by Frenchtown Rural Fire District. A station is located to the northeast across Lady Slipper Lane, approximately 1,000 feet from the entrance to the RV Park. Frenchtown Rural Fire District stated that they will require a 350 gallon per minute water supply for this subdivision. Missoula County Subdivision Regulations do not require Recreational Vehicle Parks to comply with Article 3-7, water for fire protection purposes. Subdivision Regulations Article 3-11(6), water supply for RV Parks, states that the means for water supply shall be subject to approval by the health authority and the governing body.

Lot 5 of the Ram Addition, the subject property of this proposal, has previously waived the right to protest an RSID/SID for a community or municipal water system at such time a community or municipal water system becomes available. In addition, Lot 5 is a participant in a development agreement requiring water supply for fire protection to be reviewed by Frenchtown Rural Fire District prior to issuance of a Zoning Compliance Permit or Building Permit. Scott Waldron stated in a September 12, 2001 letter to Nick Kaufman of WGM Group that "as we discussed, a fire suppression sprinkler system will meet the fire district's requirements for water supply. The specifics of the system can be addressed when the occupancy types and construction are known. The development plan will allow us to address the specific requirements." Jim and Mary's RV Park approval in 1984 did not require fire protection. The report stated that fire protection would be provided by Frenchtown Rural Fire District, water for fire protection would be served by tanker truck and individual wells and that two frost free hydrants are located adjacent to both permanent buildings.

Two public comment letters were received prior to Planning Board in regard to this request, one from Tom Mahlum and one from Senator Dale Mahlum. These letters expressed concerns with increased traffic and the proposed sewer system and ground water impacts. Since the Planning Board hearing, two additional public comment letters have been received, one from Sandy Pomeroy and John Matthews and one from the Missoula Convention and Visitors Bureau, both in full support of the proposal. There was a correction to be noted from the report submitted at the Planning Board hearing. It was noted that the Jellystone RV Park had 100 full hook up units. According to a letter from Tom Mahlum, there are actually 81 full hook up units, the rest do not have full hook ups.

Staff is recommending approval of the Eight Acre Woods RV Park Lease or Rent Preliminary Plat with seven conditions. Condition 1 requires the developer to install all proposed and required improvements before any portion of the proposal can be rented or leased. Condition 2 requires the applicant to acquire a conditional use permit. Condition 3 requires grading, drainage, stormwater and road design plans to be submitted for review and approval by Public Works. Condition 4 addresses the proposed relocation of the existing 20 foot drainage easement currently located on Lot 5 of the Ram Addition. Condition 5 requires a copy of the required road and parking space construction permit from the Health Department. Condition 6 requires the aggregation of Tract A-1-A of COS 3019 and Lot 5 of the Ram Addition or that access easements be provided. Condition 7 requires that the Missoula County Weed Board review and approve a revegetation plan for disturbed sites.

Commissioner Evans asked what the potential was for connection to a public sewer system.

Monte Sipe stated that he contacted Steve King. At this time there is no proposal to extend sewer. There are some interested property owners in the vicinity that are trying to establish a sewer district, but that has not occurred yet. The local health department does have specific requirements for people located within the Sewer Service Area and the Missoula Wastewater Treatment Facility Plan area to provide waivers as a part of their health department review. In addition, the Ram Addition, Lot 5, already has those waivers in place.

Paul Druyvestein, DJ&A, stated he was the developer's representative for Walt and Judy Lubeck and Jennifer and Alan Graves. They are the current owners and operators of Jim and Mary's RV Park. He thanked Monte for his work on the project. There is agreement with the conditions as stated. One of the concerns raised had to do with the sewer and the anticipated use of a drainfield. There are provisions for connection to a public sewer system if one ever comes out to this site. Another issue had to do with the concentrations of what comes out of an RV and what is used in RV's to clean them out. Walt has done some research into all the products that can be used to treat RV waste. Of the 13 products, only two of them have formaldehyde. The increased traffic on Lady Slipper Lane was reviewed by the Montana Department of Transportation who concluded that no improvements would be necessary. The park will only generate a 2.67% increase in traffic. It is also important to point out that the park will only be full during the summer months. In the winter months, the park has only 2 to 22 units that are occupied. The next issue is water for fire protection. It is not feasible for them to do this expansion if they will be required to provide 350 gpm fire flow. Since this is not a subdivision in the traditional sense, they thought this was resolved at Planning Board with Subdivision Regulations for RV Parks. They do want to safeguard the public, however. They do not feel it is fair to require the owners to install fire protection as if this were a traditional subdivision. They had hoped the Fire District would give some direction on what they felt was a comfortable solution for fire suppression for this expansion. The fire hall is right next to the property, they have a 4,000 gallon pumper truck and a break away gate allows immediate access to the property. It was understood that was adequate to protect this expansion. They would like it clarified if the requirement is being based just on policy or if it is something the fire district feels is necessary to safeguard the public.

Walt Lubeck stated he and his wife and daughter and son-in-law own and operate the RV Park. They have made improvements to the park every year and find that people return to the park year after year. The park is an asset to the community and they have also become a part of the community. They want the park to continue to be a benefit to the community and to them. The legislature has chosen to levy a tax on this type of business and they are in full support of the tax. After research on products used to treat RV waste, there are only two products that contain formaldehyde. It is not recommended that products containing formaldehyde be used in newer RV's. They have a notice in the park asking people not to use products containing formaldehyde. If necessary, visitors can come to office and be provided, free of charge, a product that does not contain formaldehyde.

Judy Lubeck stated that Linda McCarthy submitted a letter to her in support of their expansion. She read the letter into the record. *"Dear County Commissioners: On behalf of the Eight Acre Woods RV Park Subdivision, please recognize that tourism is a vital economic segment of the revenues brought into the community of Missoula. An additional 28 spaces for recreational vehicles would offer more opportunities for RV travelers to visit Missoula. RV travel is one of the fastest growing segments of the tourism industry and Missoula is relatively short on the number of RV spaces available in the area. Please consider the merits of this proposal carefully. Think about the economic impact it could have on the Missoula community. It is important for the tourism sector of Western Montana to grow."* --Linda McCarthy, Executive Director, Missoula Downtown Association.

Cindy Crittendon, Frenchtown Rural Fire District, stated that Scott Waldron is out of town and she did not have the authority to change any recommendations for fire protection on this subdivision. This request came in as a subdivision and she addressed it as she would any other subdivision. Even though the homes are not permanent in nature, some of the motorhomes she has seen are quite large and would be similar to fighting a mobile home fire. The subdivision regulations require either a 350 gpm fire flow or sprinkler systems. As these homes are not permanent, sprinkler systems would not be an option, but water is still required for the subdivision. She was not aware of the subdivision regulations that RV parks were exempt. There is a station near the RV park, but it is not staffed 24 hours a day. She would stand behind her recommendation but Chief Waldron would have the final authority. She talked to Scott about the subdivision and that Monte had said it was exempt, but he disagreed and said it was a subdivision and would require water for fire suppression.

Colleen Dowdall stated that RV parks are regulated separately by the Health Department. It is also located within the Air Stagnation Zone which has certain paving requirements. There is a separate section within the Subdivision Regulations standards that addresses RV parks. This identifies which parts of the standards within Subdivision Regulations will apply to an RV park. They are different for a variety of reasons. One is that the whole RV park stays in one ownership, so there are no road easements required because an owner does not have to grant easements to themselves. It is also contemplated

that these will not be permanent places of residence. The standards that do apply are the ones found in Section 3-1, General Standards and Section 3-5, Utilities. The requirement for water for fire protection is not included in either of those sections.

Monte Sipe stated that Section 3-1 does have a criteria that the Uniform Fire Code be addressed. He did not know what the specifics of the Uniform Fire Code are for RV parks.

Colleen Dowdall stated she also did not know what the specific were. There is not a specific condition required that they meet Uniform Fire Codes and one was not needed as it is included in the law. They will have to deal with Chief Waldron when he gets back. The Board's authority to impose the requirement is limited, because the requirement is not in the regulations. This is different than a subdivision; State law requires that it be reviewed as a subdivision.

Monte Sipe stated that the majority of the expansion is on Lot 5 of the Ram Addition, with the exception of one of the new roadways and a small portion of a few of the sites. That is addressed in the condition of aggregation of Tract A-1-A of COS 3019 and Lot 5 of the Ram Addition. There is a development agreement in place on Lot 5 that spells out that prior to the issuance of a zoning compliance or building permit, fire suppression will be reviewed and approved by the Frenchtown Rural Fire District. There are four alternatives: residential sprinkler systems, storage tank cisterns with fire hydrants, 350 gpm well with minimum 2,000 gallon storage or municipal system with 1,000 gpm. The right to protest an RSID/SID for connection to a municipal system has been waived on Lot 5 and the suppression system must be reviewed and approved by Frenchtown Rural Fire. As Paul mentioned, a 350 gpm well would not be feasible on this project, especially for temporary structures. This area has a limited water supply. He felt that at some time in the near future, there will be a water system in the area.

Greg Robertson stated he would not consider RV's structures either, they are on wheels. The fire codes typically deal with structures that cannot be moved. RV's are not considered structures. What is being platted is a parking lot. These are vehicles and can be moved fairly easily so the risk of hazard is significantly reduced. Ram Addition was approved as a commercial subdivision.

Colleen Dowdall stated that under both the subdivision approval of Ram Addition and the Uniform Fire Code, the owner will have to deal with Chief Waldron when he returns. She would also discuss with Chief Waldron the differences between an RV park and a regular subdivision.

Monte Sipe stated that at Planning Status there was discussion about the first part of Condition 4 vacating or dedicating or altering the drainage easement. It was determined that the first sentence of Condition 4 could be deleted.

Colleen Dowdall stated there was no formal procedure for vacating an easement as there is with vacating a road.

Commissioner Curtiss stated she had a conversation with Senator Mahlum and his concern about the sanitation and whether or not it would affect Jellystone Park. For the record, the Health Department conducts the review of sanitation and septic issues. There will be a study done of how the water moves through the water table in the area. It is not the Commissioners purview to review sanitation.

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

Commissioner Curtiss moved that the Board of County Commissioners amend Condition 4 to remove the first sentence. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve Eight Acre Woods RV Park Subdivision for Lease or Rent, based on the findings of fact in the staff report and subject to the conditions as amended. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

#### **Eight Acre Woods RV Park Subdivision for Lease or Rent Conditions of Approval:**

1. The developer shall install all proposed and required improvements before any portion of the RV Park expansion may be rented or leased. *Subdivision Regulations Article 4-1(1)(D).*
2. An application for a conditional use permit for a recreational vehicle and travel trailer park in the Valley West Community Development District C-C2 zone shall be submitted for review and approval by OPG prior to final plan approval. *Missoula County Zoning Regulation Section 6.02 D.2 and staff recommendation.*
3. Engineered plans for grading, drainage, erosion control, storm water improvements and final road design shall be re-submitted for review and approval by County Public Works Department prior to final plan approval. The re-submittal shall include the size and location of sumps, a crowned or cross-slope road design, drainage ways and any culverts that would convey the flow under intersection roads. *Subdivision Regulations Article 3-11(3), 3-11(5), 4-4(1)(D) and Public Works recommendation.*
4. If the existing 20 foot public drainage easement shown on the recorded plat of the Ram Addition is to be relocated, a document describing and showing the new public drainage easement shall be dedicated and filed with the Missoula County Clerk and Recorder prior to final plan approval, subject to review by the County Attorney's Office and County Public Works. *Subdivision Regulations Article 3-6, 3-5, County Surveyor's Office and County Attorney's Office recommendation.*
5. The developer shall provide a copy of the required road and parking space construction permit from the Missoula City-County Health Department to OPG prior to final plan approval. *City-County Health Department recommendation.*

6. The developer shall aggregate Tract A-1-A of COS 3019 and Lot 5 of the Ram Addition or access easements from Tract A-1-A of COS 3019 to Lot 5 of the Ram Addition shall be filed with the County Clerk and Recorder's Office prior to final plan approval. *Subdivision Regulations Article 3-11(4)(D) and staff recommendation.*
7. A Revegetation Plan for disturbed sites shall be reviewed and approved by the Missoula County Weed Board and a development agreement for implementation of the plan and requiring the landowner to maintain the property in compliance with Montana's County Weed Control Act and the Missoula County Noxious Weed Management Plan shall be approved by the County Attorney's Office, prior to final plan approval. *Subdivision Regulations Article 3-1(1)(B) and County Weed Board recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 3:45 p.m.

**THURSDAY, JULY 3, 2003**

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

Claims List – The Commissioners signed the Claims List, dated July 1, 2003, with a grand total of \$3,530.12. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated July 2, 2003, with the following grand totals:

- 1) \$10,683.17; and
- 2) \$2,496.51.

The Claims Lists were returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated July 3, 2003, with the following grand totals:

- 1) \$6,421.75; and
- 2) \$33,590.59.

The Claims Lists were returned to the Accounting Department.

Monthly Report – Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending June 30, 2003.

ADMINISTRATIVE MEETING

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

Agreement – Chairman Carey signed a Trail Construction Agreement, dated July 3, 2003, between Missoula County and the Seeley Lake Community Council ("SLCC") for Missoula County Public Works' oversight for the construction of a multipurpose trail adjacent to Boy Scout Road from U.S. Hiway 83 to "C" Street, and then through Montana State property and National Forest land. The term will be July 1, 2003 through June 30, 2004. The SLCC has received a matching grant for \$25,000 from the State of Montana. All other terms and conditions are set forth therein; materials and labor will be provided by volunteers in the Seeley Lake Community.

Agreement – Chairman Carey, on behalf of Missoula County, signed Montana Renewable Resource Grant Agreement No. RRG-04-1197, thereby accepting \$100,000 for sub-district costs for the Mullan Road Corridor Sewer Project. This grant is administered by the Montana Department of Natural Resources and Conservation ("DNRC"). The work described in "Project Scope" therein, shall be completed by December 31, 2004. All other terms and conditions are set forth therein. The document was returned to Greg Robertson, Public Works Director, for further signatures and handling.

Agreement – Chairman Carey signed DEQ Agreement No. 204010 between Missoula County and the Montana Department of Environmental Quality to provide services related to the administration and implementation of Title V permits in Missoula County. The term will be July 1, 2003 through June 30, 2004. The total amount shall not exceed \$1,200.00. All other terms and conditions are set forth therein. The document was returned to the Health Department for further signatures and handling.

Board Appointment – Commissioners Carey and Evans approved and signed a letter, dated July 7, 2003, to Jean Curtiss, confirming her reappointment to a three-year term as a member of the Missoula Development Authority. Ms. Curtiss' term will run through June 30, 2006.

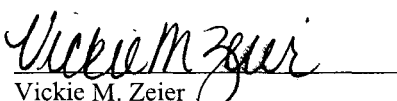
Other items included:

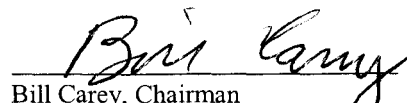
- 1) The Commissioners reviewed and approved a Missoula County Enhancement Request – 2004 Budget – for Justice Court II/082, in the amount of \$1,092.00, for a two-week overlap for the training of a replacement for a departing JP clerk.

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

**FRIDAY, JULY 4, 2003**

**THE COURTHOUSE WAS CLOSED FOR THE INDEPENDENCE DAY HOLIDAY.**

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

**MONDAY, JULY 7, 2003**

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 the Clerk of the District Court, Shirley E. Faust, for the month ending June 30, 2003.

Indemnity Bond – Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming April Lynn Shelton, of Oregon, as Principal for Clerk of Court Warrant #910805, issued June 9, 2003 on the Missoula County Trust Fund in the amount of \$100.00 (for child support), which cannot be found.

Indemnity Bond – Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Kila Jarvis as Principal for Missoula County Public Schools Warrant #127100, issued June 12, 2003 on the MCPS Payroll Fund in the amount of \$3,481.79 (for wages), which cannot be found.

**TUESDAY, JULY 8, 2003**

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, Commissioners Carey and Curtiss participated in the Red Cross SALT (Save a Life Tour) caravan from the University of Montana to Muralt's Truck Plaza and the blood drawing at Muralt's.

**ADMINISTRATIVE MEETING**

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

Budget Transfer – The Commissioners signed Budget Transfer Control No. 03-047 for the Public Works Department, in the amount of \$4,700, moving the budget spending authority to purchase electrical hook-up for the well house.

Contract – The Commissioners signed a Professional Services Contract between Missoula County and the Western Montana Clinic Radiology for the provision of services to low income, non-insured females and males through the Partnership Health Center's United Way Service Agreement. Services will be provided on an on-going basis beginning June 20, 2003. All other terms and conditions are set forth therein.

Task Order – The Commissioners signed Task Order No. 03-07-4-51-106-0 to the Missoula County Master Contract that covers the period July 1, 1998 through June 30, 2005 (STD/HIV) between the Montana Department of Public Health and Human Services and Partnership Health Center ("PHC") for comprehensive outpatient health and support services to meet the needs of HIV-infected individuals and their families. The total amount shall not exceed \$70,000.00. The term will be April 1, 2003 through March 31, 2004. The document was returned to Kim Mansch at PHC for further signatures and handling.

Closing Documents – Chairman Carey reviewed and signed the following Bond Closing Documents for RSID 8474 (Mullan Sewer Project) for closing on July 9, 2003:

1. Certificate Showing Due Execution of Construction Contract;
2. County Clerk and Recorder/Treasurer's Certificate and Receipt (\$4,729,000);
3. Officers' Certificate; and
4. Rural Special Improvement District No. 8474 Bond – DNRC Revolving Loan Program.

The documents were returned to Celia at Dorsey & Whitney's office for further handling.

Extension Request – Per recommendation of the Office of Planning and Grants staff, the Commissioners approved and signed a letter, dated July 8, 2003, to Andy Mefford, Professional Consultants, Inc., approving his request for a one year extension of the final plan approval deadline for Readman Subdivision for Lease or Rent. The new deadline will be July 8, 2004.

Request for Action – On behalf of the Office of Planning and Grants ("OPG"), Chairman Carey signed an Application for Federal Assistance and Assurances Form. OPG is applying to the U.S. Department of Health and Human Services for \$104,000 on behalf of Big Brothers Big Sisters to develop a program to provide mentoring services to children whose parents are incarcerated. Funding will also allow for the provision of parenting education activities to the caretakers of these children. The document was returned to Peggy Seel in OPG for further handling.

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

**WEDNESDAY, JULY 9, 2003**

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

Claims Lists – The Commissioners signed seven (7) Claims Lists, dated July 8, 2003, with the following grand totals:

- 1) \$1,301.99;
- 2) \$67,456.99;
- 3) \$84.00;
- 4) \$111.13;
- 5) \$93,798.97;
- 6) \$32,344.14; and
- 7) \$21,126.23.

The Claims Lists were returned to the Accounting Department.

Plat and Agreement – The Commissioners signed the Plat and Subdivision Improvements Agreement for Beyer Meadows, a 41-lot subdivision of Tract A, C.O.S. No. 5404 located in the SW¼ of Section 32, T 12 N, R 20 W, PMM, Missoula County, a total area of 64.60 acres, with the owner/developer being Bitterroot Investments Exchange, LLC. The Improvements Agreement, dated July 9, 2003, is for numerous improvements as set forth therein; said improvements shall be completed no later than January 1, 2004. The estimated costs are \$400,000, and have been guaranteed by a Letter of Credit from First Security Bank.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

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

Agreement – Chairman Carey signed an Agreement between Missoula County and the Montana Department of Environmental Quality for the purpose of delegating to the County the authority to review water supply, wastewater, and stormwater systems in subdivision. The term will be July 1, 2003 through June 30, 2005. All other terms and conditions are set forth therein. The document was returned to the Health Department for further signatures and handling.

Other items included:

- 1) A discussion was held regarding the Hellgate Treaty Signage, and the Preserving Missoula County's History Grant.
- 2) The CIP Budget was discussed.

Tax Abatement Requests – At the Clerk & Recorder's Departmental Meeting with Vickie Zeier, held on July 9, 2003, the Commissioners approved requests and/or letters regarding the following:

- 1) To approve a request from Lillian Evans to waive penalty and interest for Taxpayer ID #1060504;
- 2) To approve a request from Steven Goss to waive penalty and interest for Taxpayer ID #761009;
- 3) To approve a request from Jack Westre to refund penalty and interest paid on 1999 mobile home tax bill for Taxpayer ID #90317380;
- 4) To deny a request from Bill Cox to waive penalty and interest on real estate for Taxpayer ID #464300;
- 5) To deny a request from SkyWest in St. George, Utah, to waive penalty and interest on real estate taxes; and
- 6) To approve a request from George Weddle, New York, New York, to waive penalty and interest for 2002 personal property tax bill for Taxpayer ID #80814445;

#### PUBLIC MEETING – July 9, 2003

The Public Meeting was called to order at 1:30 p.m. by Chairman Bill Carey. Also present were Commissioner Barbara Evans, Commissioner Jean Curtiss, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall, Public Works Director Greg Robertson and Bidding Officer Doreen Culver.

#### Pledge of Allegiance

#### Public Comment

None

#### Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$271,643.60. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### Bid Award: 10,700 Tons of Plant Mix Asphaltic Concrete (Public Works)

Greg Robertson presented the staff request.

This is a request to award a bid for 10,700 tons of Plant Mix Asphaltic Concrete. Missoula County solicited bids for 10,700 tons of Plant Mix Asphaltic Concrete, the annual supply of hot mix asphalt for overlay and patching. Two bids were received: JTL Group, Inc. at \$23.95 per ton for a total of \$256,265.00 and Montana Materials (Jensen Construction) at \$25.50 per ton for a total of \$272,850.00. After evaluating the bids, the Public Works Department recommends the Board of County Commissioners award the bid to JTL Group, Inc. as the lowest and best bid.

Chairman Carey asked if this amount represented an increase from what the department purchased last year.



Greg Robertson stated that when he first started, the County had only \$30,000 budgeted for asphalt. Now it is approximately \$300,000, so it is getting better.

Commissioner Evans moved that the Board of County Commissioners approve awarding the bid for 10,700 Tons of Plant Mix Asphaltic Concrete to JTL Group, Inc. in the amount of \$256,265.00, as the lowest and best bid. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Bid Award: Construction of Beeler Road (Public Works)**

Greg Robertson presented the staff request.

This is a request to award a bid for construction of Beeler Road in the Huson area. This is a tri-party project between the Department of Transportation, Montana Rail Link and Missoula County to close the Huson railroad crossing and construct an alternate alignment. Missoula County solicited bids for construction of Beeler Road in the Huson area. Two bids were received: Green Diamond Construction in the amount of \$78,315.70 and JTL Group, Inc. in the amount of \$66,288.70. After evaluating the bids, the Public Works Department recommends the Board of County Commissioners award the bid to JTL Group, Inc. as the lowest and most responsive bidder. The project was estimated at approximately \$80,000.

Commissioner Evans asked if this included funding to pay off and refund any monies that residents have paid into the RSID that was created a few years ago to deal with this closure.

Greg Robertson stated that those figures were included in the master amount of the bid and will be taken care of.

Commissioner Evans moved that the Board of County Commissioners approve awarding the bid for the Construction of Beeler Road in the Huson area to JTL Group, Inc. in the amount of \$66,288.70 as the lowest and most responsive bidder. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Bid Award: Terra Cotta Restoration Work on Courthouse Exterior (Facilities Management)**

Doreen Culver presented the staff request.

This is a request to award a bid for Courthouse Exterior Restoration work. Missoula County solicited bids for Terra Cotta Restoration Work on the Courthouse Exterior. This is a Capital Improvement Project (CIP) item that restores the exterior finish to a like new appearance. The scope of the work includes complete restoration of the exterior Terra Cotta envelope on the 1910 portion of the Courthouse, complete restoration of the existing granite base at the building perimeter and some additional work on the south side of the Courthouse. This is the first phase of restoring the outside of the building in anticipation of its 100th anniversary.

Bids were received from: Burton Construction in the amount of \$277,805.74; Hydro-Tech, Inc. in the amount of \$168,000; Garden City Builders in the amount of \$329,000; Sirius Construction in the amount of \$360,000; and Anderson Masonry in the amount of \$426,800.

After evaluating the bids and review by A & E Architects, it is the recommendation of Facilities Management to award the bid to Hydro-Tech in the amount of \$168,000. Hydro-Tech has extensive experience in this type of work. The construction estimate for the project was \$495,000, plus \$42,000 in architectural fees.

Commissioner Evans stated that this work is being done not just for aesthetic reasons, it is being done for safety reasons as well, including patching and repair work and removal of failed mortar joint.

Commissioner Evans moved that the Board of County Commissioners approve awarding the bid for Terra Cotta Restoration Work on the Courthouse Exterior to Hydro-Tech in the amount of \$168,000 as the lowest, best and most responsive bidder. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss stated that she was pleased the work included the installation of bird deterrent to deal with the pigeon droppings problem.

**Hearing: Petition to Abandon an Alleyway in East Clinton Addition**

Chairman Carey opened the public hearing.

Mike Sehestedt presented the staff report.

This is a petition to abandon an "alleyway between Lots 7 through 8 and 9 through 10 in Block 4 of East Clinton Addition located in Missoula County, Montana."

The reason for the request is to allow for the complete and total fencing of privately owned properties on Lots 7, 8 and 9 in Block 4 of the East Clinton Addition.

The following landowners have been notified: Jesse R. and Carey James; Stephen and Sabrina Bayha; David and Debbie Lorenzo; and James B. Jr. and Karla K. Taylor.

Jesse James stated that he filed the petition. He would like to fence his entire property and the alley has no use in this location. A hill makes the alley impassable to vehicles. His lawn is located where the alley would exist.

Debbie Lorenzo stated the hill prevents vehicle access, there is no alley and she is in favor of the abandonment.

Mike Sehestedt stated that the hearing should be recessed, then the Public Works Director and one County Commissioner will conduct a site inspection. Following their report to the Board, additional testimony, if any, will be taken, then the Board will make a decision.

Chairman Carey stated the public hearing on this petition was in recess. A site inspection will be scheduled and the matter will be before the Board again next Wednesday, July 16, 2003.

**Hearing: Annexation to Frenchtown Rural Fire District – Petty Creek Area**

Chairman Carey opened the public hearing.

Mike Sehestedt presented the background.

There was a conflict in the public notice of this hearing. It was on the agenda and a public hearing was held last week on the matter. However, the published notice indicated the hearing would be conducted today. As public notice is jurisdictional, time must be given for anyone who wishes to comment on the proposed annexation.

The Frenchtown Rural Fire District is an established fire district serving the Frenchtown, Petty Creek and Alberton areas. They have received a petition to annex additional property in Petty Creek into the 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 on Attachment ‘A’ of the petition, it is rather lengthy so he would not read the entire description. The Frenchtown Rural Fire District Board recommends the Board of County Commissioners accept the annexation. The purpose of the hearing is to hear protests, if any, to the proposed annexation.

There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request for annexation into the Frenchtown Rural Fire District the area described on Attachment ‘A’ of the petition. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Hearing (Certificate of Survey): Lundberg 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 for that parcel described as Parcel B1 of COS 3918, located in the north one-half of Section 7, Township 11 North, Range 16 West.

Gary Lundberg has submitted a request to create three parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 23.34 acres in size located near Clinton, Montana, along the airfield at the Rock Creek turnoff. Gary Lundberg proposes to create one approximately 2.64 acre parcel for transfer to his daughter, Jennifer Lundberg, one approximately 2.64 acre parcel for transfer to his daughter, Roxanne Lundberg and one approximately 2.94 acre parcel for transfer to his daughter, Jessica Lundberg, each for residential purposes, and keep the remaining approximately 15.1 acre parcel for residential purposes as well.

This parcel did undergo subdivision review as Rock Creek Airpark, a request to create 11 lots. However, the subdivision plat was never filed. This family transfer request is to create three additional parcels for transfer to his daughters and a remainder for himself.

The history of the parcel is a follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 3918	1991	20 acre remainder	Ekstrom	

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

Gary Lundberg was present and came forward to answer any questions the Board may have.

Chairman Carey asked Mr. Lundberg what his intentions were for the property and to assure the Board that this was not an attempt to evade subdivision review.

Gary Lundberg stated his intention was to give his three daughters a place to build. The transfer is to his girls who would like to build houses there.

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

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

Chairman Carey stated that Mr. Lundberg would receive a letter of approval for the division of land. Obtaining all necessary permits and approvals for any future construction on the site would be the responsibility of the owner.

Continuation of Hearing and Decision: Proposed Changes to Missoula County Animal Control Ordinance (from June 25, 2003)

Chairman Carey reconvened the hearing on the proposed changes to the Missoula County Animal Control Ordinance.

Paula Nelson, Animal Control Program Supervisor, stated the changes to ordinance include an increase in license fees and an increase in impoundment fees, both due to a rise in the cost of living index and the move to the new facility. This is part of an ongoing effort to make Animal Control more solvent on its own because of the increased costs to house and vaccinate animals. Costs are steadily increasing to provide these services. This is the first increase requested since 1998. After testimony at the first two hearings, some changes have been made. Under the definitions section for Dogs at Large, a change was made to include harness and remove the length restriction of the lead. People are using the new, expandable leashes in parks. The restriction was to prevent dogs from lunging at someone and the expandable leashes have the ability to draw the dog in and keep better control of it. Some minor spelling corrections were also made. Another major change was to remove the exemption under the Barking Dog section for "commercial kennels." Under Section 9, Cruelty to Animals, a change was made to convict a person of "cruelty to animals" instead of "the offense of cruelty to animal." The State's penalty for cruelty to animals was also added. Another change is to allow purchase of a three year license by providing proof of a three year rabies vaccine. Another change excludes the free senior citizens license. In the future, a license will be half price for a senior citizen, however, any dog currently licensed under the free license will be continued until the demise of that dog.

Commissioner Evans stated she received some phone calls and some e-mails favoring the changes to the ordinance, especially the barking dog section.

Mark Koenig stated he runs sled dogs in Seeley Lake. He felt the commercial kennels under the Barking Dogs section should be specified. During feeding time at a sled dog kennel, there is a lot of barking, which could be considered a nuisance. It cannot be avoided. He keeps his dogs quite between 10:00 p.m. and 8:00 a.m. There should be something in the ordinance that specifies a quiet time.

Commissioner Curtiss stated that this is an expected behavior for sled dogs, feeding time or when they are being harnessed. The ordinance is not aimed at those normal behaviors.

Mark Koenig stated that it should be specified because someone who doesn't understand dogs might not realize what is going on.

Commissioner Evans stated that she agreed there should be a quiet time in the evening. However, as counsel pointed out, there are people who sleep during the day and work at night.

Mike Sehestedt stated the testimony has been from people complaining about barking both during the day and during the night. About 50% of the testimony mentions dogs barking all day long. He has raised the fact before that the ordinance will raise serious problems for people with sled dog kennels.

Commissioner Evans hoped there was a compromise that could be reached to address times when barking is expected but recognize that people have a right to the quiet enjoyment of their property without listening to dogs barking constantly.

Mark Koenig stated he moved to Seeley to get away from people and has been there for years. However, more land is being subdivided and neighbors are moving closer all the time. What are his rights as an existing resident.

Commissioner Curtiss asked if language could be added to indicate that normal behavior of animals was excluded as a nuisance. If someone came to her house and her dog was defending its territory by barking, that could be considered a nuisance.

Mike Sehestedt stated the fundamental problem was extremely unreasonable people on both sides of the question. There would be no need for the ordinance if reasonable people were involved. If the Board wanted to address sled dog kennels, they could be included in the exemptions to the ordinance just like veterinary hospital and animal shelters and include specific hours. He was not sure that sled dogs should be a specially favored class. These are policy decisions, not legal decisions. The language could be amended to read: "... except that such sounds made at animal shelters, established sled dog kennels between the hours of 6:00 a.m. and 10:00 p.m., and veterinary hospitals, shall be exempt ..." That would take care of the sled dog kennel issue. It leaves everyone else with a kennel included in the ordinance.

Paula Nelson stated that when this ordinance was being drafted, they made sure it required substantial evidence. It takes more than one person to file a complaint against a kennel. She did not want to exclude sled dog kennels because it could be that there is truly an on-going, all day problem. The first thing that will be done is mediation and screening the complaint to make sure this is not a case of dealing with unreasonable people. Animal Control does not consider the barking that occurs when harnessing sled dogs or protecting their territory as a nuisance barking issue. If the barking starts at 8:00 a.m. and goes to 6:00 p.m., that is not acceptable, no matter whether it's a sled dog or boarding kennel. She would ask that sled dog kennels not be excluded. Animal Control will work hard with neighborhoods to solve these issues. They want to make sure the ordinance is fair for everybody.

Commissioner Evans stated she agreed that sled dogs should not be exempt.

Mike Sehestedt stated this is a criminal ordinance and a person ought to know by some objective standard when they are committing a crime. He is hearing that the administration of the ordinance will solve that problem so that means there is no set standard, the enforcement of the ordinance is at the discretion of people. The conduct of the dog remains the same. The people who are complaining want the government to step in and enforce against the neighbors a criminal statute. He was not sure what the answer was, but it would be best to be as specific as possible in the ordinance. It would be foolish to adopt an ordinance that criminalizes conduct counting on the good judgment of the enforcement officials. He is not being critical of Animal Control but this depends upon the judgment and good will of the enforcers to decide when it is or

isn't a criminal offense. More guidelines included in the ordinance and the less officer discretion in defining when conduct is a crime, will make for a better ordinance.

Commissioner Evans asked if Mr. Koenig was aware of any other ordinances from around the country that were satisfactory to both sides of the issue.

Mark Koenig stated he was not aware of any other ordinances but he did agree that he should be able to know when he was doing something against the law.

Commissioner Curtiss stated that people like Mr. Koenig, who are responsible kennel owners, do control their dogs and have taken the time to speak on the issue. There are other kennel owners who are not as responsible. She suggested adding to the definition of "Nuisance Dog" to say that this does not mean normal canine response to feed time, playing or being harnessed.

Mike Sehestedt stated that would probably help. It would certainly address the responsible sled dog owners' concerns. However, it could also open up other mischief. This is a policy decision. If the ordinance were literally enforced, all the sled dog teams would be out of business. On the other hand, if it is enforced, but not against sled dogs, they would be fine. The definition states, "... repeated periods of at least five minutes with less than one minute interruptions, that annoys a person to an unreasonable degree ...." During a half hour of feeding time there is constant barking. If a person is annoyed and it is determined that it is not unreasonable that they are annoyed, then there is violation of the ordinance. He did not know the answer, this is the problem that has baffled him since this was first discussed. It will ultimately come down to a policy decision by the Board.

Mark Koenig stated that he wanted to be sure the Board understands that this is not a black and white situation.

Commissioner Curtiss stated that is why the process has taken so long.

Mike Sehestedt stated that there could be the case of a dog that is in violation of the ordinance because the neighborhood kid runs a stick down the fence, or a neighbor's dogs barks at you and you yell at the dog to be quiet and the dogs barks at you. Who is responsible; you or the dog.

Donna Miller stated the two things she would like to see added would be to expect certain noise from different types of kennels. Sled dog kennels have a certain set of noises associated with harnessing and feeding. Hunting kennels have certain routines as well. There needs to be some allowance for normal routines that happen every day so those aren't considered a nuisance. The other thing that should be considered is a noise level issue. Hearing a sled dog team a mile away is not a nuisance and is different than a dog barking next door.

Commissioner Evans stated she understands the decibel level issue. It is not all that accurate and there are different frequencies on the decibel meters. She did not think that would be a satisfactory way to handle the issue.

Donna Miller stated there are some EPA studies that have been published that set standards for average decibels levels of different activities so they can be used in situations like this. The technology has changed in the past few years and is being used regularly in testimony about kennels, animal sanctuaries, etc.

Kirk Barnum, Condon, stated he is also involved in sled dog mushing and has operated a kennel in Missoula County for 4 years. He is not in favor of removing commercial kennels from the exemption. There is compassion from the Board and from Paula, but once something goes into print and then officials are replaced, the set of laws remain the same and may be interpreted differently by the next group of people. He is in favor of leaving the exemption in the ordinance as it currently stands and as it was when he first established his kennel. Perhaps a compromise could be to grandfather in those who are already established. Suddenly, this is a nuisance when it wasn't a nuisance when the kennel was established. This makes the property they purchased for this purpose valueless. This seems like spot zoning, changing the rules after a kennel is established and leaving them with no place else to go.

Commissioner Evans asked if Paula received many complaints about sled dog kennels.

Paula Nelson stated that they don't receive many complaints. If the Board is not comfortable with the Barking Ordinance, she would ask that it be withdrawn at this time and that the rest of the ordinance be passed, so Animal Control can move forward with the fee changes and some of the other issues included in the ordinance.

Mike Sehestedt stated that he suggested removing "commercial kennel" as it is undefined in the terms of the ordinance. A "commercial kennel" would have to be defined to leave it as an exclusion. It would also exempt from the ordinance several problems that contributed to the creation of the ordinance in the first place. He felt it would be possible to delete "commercial kennel" and in its place insert "sled dog kennels located in rural areas" or something along those lines. It addresses a specific group and lets the ordinance go forward.

Commissioner Curtiss stated that she received a call from the Alberton area about a kennel in that area, not sled dogs. The kennel operator says they are raising pure-breed dogs to sell, however the neighbors have noticed "traveling salesman" and don't believe the dogs are pure-bred. These dogs bark all the time and the kennel operator is doing nothing about the problem. She wondered about other people with kennels that were not raising sled dogs.

Mike Sehestedt stated this is an irremediable conflict. It hard to sort out what is what.

Commissioner Curtiss stated that the Board cannot legislate being nice or courteous.

Mike Sehestedt stated that reasonable and non-obsessed could be added to that list.

Kirk Barnum stated he wanted to speak about the description of a commercial kennel which leaves no room for interpretation. There is a definition within the current policy. In pervious hearings, it was noted that a commercial kennel

is really a way to license a group of dogs. However, Section 3, Item Q, of the ordinance grants consent to have a public official inspect a facility if there has been one complaint from a concerned citizen. Also, by operating a licensed commercial kennel, the owner agrees to comply with State and local ordinances concerning keeping large groups of dogs. There is quite a bit more to a commercial kennel license than licensing a group of dogs. Some property privacy rights are being given up and the owner is agreeing that they will comply with the regulations concerning keeping a large number of animals.

Mike Sehestedt stated there are no particular regulations other than standard State laws provisions addressing cruelty to animals. The State law requirements at this time don't require no barking. A commercial kennel is not defined. A Class I kennel means 5 to 20 dogs and a Class II kennel means 20 or more dogs; a home or facility (i.e., commercial establishment). It doesn't mean that much, but with that concentration of animals, there is the right to come in and look for violations of the animal cruelty statutes.

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

Commissioner Curtiss asked if something should be added to the definition of nuisance barking so that it doesn't mean the normal canine response to certain things.

Mike Sehestedt stated that would address the concerns of those that have testified today. A suggestion would be to add: "This shall not be considered to include periods of noise associated with feeding or exercise." Perhaps just do this for sled dog kennels as there hasn't been testimony from other owners. He suggested: "Shall not include the ordinary normal noise associated with feeding, exercising, loading of sled dogs." The ordinance could be adopted and if there are other concerns, it can be fixed. It is a unique activity and to some degree, the Board has to act on the testimony they have received. Sled dog owners are the people that have come to testify.

Commissioner Evans stated that it is also a misdemeanor to deliberately antagonize a dog in order to make it bark.

Mike Sehestedt stated that couldn't be included in the ordinance, but someone doing that really annoys him.

Commissioner Curtiss stated that she was undecided if sled dog kennels should be added back to the exemptions.

Mike Sehestedt stated that adding the language to the Nuisance Barking addresses the major concerns for the sled dog kennels.

Commissioner Curtiss stated that she would list in the exemptions sled dog kennels with a current kennel license.

Commissioner Evans stated she considered that a restriction on trade.

Commissioner Curtiss stated that she meant that the kennel would have to keep their license current.

Paula Nelson stated she agreed with Mike was saying. Using the verbiage without the sled dog criteria could allow anyone with a kennel to say that barking at squirrels was normal behavior. When the barking goes on 24/7, something needs to be done.

Commissioner Curtiss moved to adopt the final draft dated July 8, 2003 of the Missoula County Animal Ordinance. Commissioner Evans seconded the motion.

Commissioner Curtiss moved to amend Section 1, Definitions, Subsection H, Nuisance barking dog(s), to add: "This does not mean ordinary or normal noise in response to feeding or exercising sled dogs." Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved to amend Section 8, Nuisance Barking Dog(s), Subsection A, to add to the exceptions "sled dog kennels holding a current kennel license" and correct the spelling error from "baking" to "barking." Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

The motion to adopt the final draft of the Missoula County Animal Ordinance, with amendments, carried on a vote of 3-0.

Commissioner Evans stated that the sled dog owners in the audience seem like responsible owners who care about their neighbors. She ask them to remember that if sled dogs kennels start to become a problem, the ordinance can be amended to remove them from the exceptions.

Commissioner Curtiss stated that she would like to make sure that the ordinance as adopted is available on the County's website as soon as possible.

Mike Sehestedt stated that the effective date of the ordinance would be August 9, 2003. By statute, it is effective 30 days after adoption, as it wasn't done as an emergency ordinance.

#### **Consideration: Holloman Creek Estates (3 Lots) – Upper Miller Creek Road**

Liz Mullins, Office of Planning and Grants, presented the staff report.

Johnson Brothers Contracting, Inc., represented by Tim Wolfe of Territorial Engineering & Surveying, are requesting to subdivide a 120 acre parcel into three lots. Staff is recommending approval of the Holloman Creek Estates with 12 conditions of approval.

The property is located thirteen miles from the intersection of Highway 93 and Miller Creek Road, off of Upper Miller Creek Road at the confluence of Miller Creek and Holloman Creek. The property is unzoned. The Missoula County Regional Land Use Guide designates the property as "Open and Resource" with a recommended maximum residential

density of one dwelling unit per 40 acres. The proposal is to create three lots on 120 acres, each forty acres in size. The property is completely surrounded by Federal land, managed by the Forest Service for its resource value. Hillside regulations are applicable to the subject property and the applicant is proposing "no build" zones on slopes greater than 25 percent.

The property is accessed via Upper Miller Creek Road, which crosses through proposed Lots 1 and 3. Schwartz Creek Road forks off of Upper Miller Creek Road on Lot 1 and crosses proposed Lot 3. Both roads are maintained by the Forest Service. There is an access easement from Miller Creek Road across Lot 1 for access to Lot 2. Based on these being Forest Service roads and comments from the Forest Service, staff recommends conditions of approval requiring:

- That the developer provide evidence of permanent legal access to the subdivision.
- That the developer include a provision in the covenants requiring lot owners to obtain a permit for roadway maintenance for Upper Miller Creek Road and Schwartz Creek Road from the Missoula Ranger District of the U.S. Forest Service (USFS), for each maintenance project and that the Homeowners Association obtain a general maintenance permit from the USFS prior to final plat approval.
- A condition for a road maintenance agreement statement on the plat.
- A condition for an RSID/SID statement on the plat for improvements to Miller Creek Road and Schwartz Road.

However, Conditions 1 and 3 are based upon the roads being Forest Service roads. There is a question of whether these roads are County roads which has not yet been determined and may require a County Attorney's Office opinion.

The property is not located within a Fire District. Missoula Rural Fire District reports that there would be a 30 minute response time from its nearest station. Curt Belts stated that the Missoula Rural Fire District will not be able to extend the District boundaries to include this property and that the Fire District will not contract to provide fire protection. Wildland/Residential Interface (WRI) standards for defensible space have been addressed in the covenants. Staff recommends the developer, in consultation with a fire protection specialist, develop a fire protection plan adequate for protection of the subdivision from structure fires as well as from wildfire. The plan should incorporate residential sprinklers and a source of water for protection from wildfires and other fires that originate outside the residence. It should discuss the necessity of homeowner responsibility for fire suppression and include a provision relieving the County of liability in the event of fire. Staff recommends that the plan be reviewed and approved by the governing body prior to filing the final plat.

There is riparian vegetation along Holloman Creek and Miller Creek. The confluence of these creeks is located on proposed Lot 1. A Riparian Management Resource Plan is in the covenants. Riparian vegetation is designated along the stream channels and shown as 200 foot wide "no build" zones. A recommended condition is that the "no build" zone for the Riparian Resource area be re-labeled as a "no improvement" zone on the plat. Staff recommends a condition that the final riparian resource area boundary be reviewed and approved by Montana Fish, Wildlife and Parks and OPG prior to final plat approval. Staff also recommends that this revised Riparian Resource Area site map be included as an attachment to the covenants. Based on comments from Fish, Wildlife and Parks, staff recommends that the Riparian Management Plan be amended to state several additional provisions for the riparian area, mainly that there are no new vehicular stream crossings or motorized use in the area. Staff also recommends that the Road Construction Guide be deleted from the covenants.

The first variance request is from the required 24 foot paved road width for Upper Miller Creek Road and Schwartz Creek Road to the existing 20 foot gravel surface widths. Upper Miller Creek Road and Schwartz Creek Road are both 20 feet in surface width. The Missoula County Public Works Department does not object to this variance request. Staff recommends approval of the variance request.

The second variance request is from the standard that prohibits lot division by a right-of-way easement. Lots 1 and 3 are split by both Upper Miller Creek Road and Schwartz Creek Road. The Public Works Department does not object to the variance request. Staff recommends approval of the variance request.

Condition 6 requires that the "Living with Wildlife" section of the covenants be amended to state that fencing along lot boundaries must be wildlife-friendly fence and that no barbed wire is allowed. The Riparian Plan states that livestock are to be kept off riparian areas except for fenced livestock watering areas on the creek. Because livestock is allowed on the site, the Commissioner may want to revise this condition to state that fencing along lot boundaries "should be wildlife-friendly" instead of "must be wildlife-friendly," and amend the statement, "No barbed wire is allowed" to "Barbed wire is discouraged."

There is a condition that the covenants be amended to delete the language authorizing Missoula County to enforce certain covenants and replace it with language prohibiting amendment to covenants relating to Garbage Handling, Riparian Resource Plan, Wildlife and Fire Protection, without permission of the governing body. There is also a condition which requires inclusion of a provision in the covenants advising property owners of the Health Department recommendation that all new construction incorporate passive radon mitigation systems.

Chairman Carey asked for public comments.

Tim Wolfe, Territorial Engineering & Surveying, developer's representative, stated that a lot of time was spent with OPG working out details for this proposal. He was available to answer questions. As Chuck Wright from the Surveyors Office was present, he would like to know if there is an answer to the public road issue. There is some documentation that indicates Upper Miller Creek Road is an old GLO road and petitioned County road.

Chuck Wright, Surveyor's Office, stated that the road was petitioned in 1868 to go from Miller Creek, over the top and down all the way to Philipsburg. Two different people were trying to get the same thing done, so one person withdrew the request and the other request went forward. He and Mike Sehestedt have worked on that petition before because there was a problem at the very end of the road. The statement in the petitions was used in that dispute, that this started from the end of the old County road. It was difficult to figure out. There is an attorney's opinion on this particular petition written

several years ago by Mike Sehestedt. The GLO road shown on the map, done in 1906, only monuments the old petitioned road.

Commissioner Evans asked if Chuck was saying this is or is not a County road.

Chuck Wright stated he would not answer at this time, he would let Colleen answer the question.

Colleen Dowdall stated she has not seen Mike's opinion yet. There just needs to be something in writing from the Surveyor's Office indicating the existence of the petition.

Chuck Wright stated that Steve Smith indicated he knew of the petition but there was a question of who was first between the County and the Forest Service. The Forest Service was not established until after 1868.

Tim Wolfe stated that Bob Deeds has been retained as the fire expert for this proposal. He will write the proposed plan and it will be submitted for approval soon.

Liz Mullins stated that if it is determined that Upper Miller Creek Road is a County road, then Condition 1 would not be required and Condition 2 would only apply to Schwartz Creek Road.

Colleen Dowdall stated she would like to keep the conditions as they are. When everything is straightened out as to who has jurisdiction, the conditions can easily be met.

There were no further public comments.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(3)(B) of the Missoula County Subdivision Regulations for Upper Miller Creek Road and Schwartz Creek Road to vary from the 24 foot road pavement surface width requirement to the existing 20 foot gravel surface width; and approve the variance request from Article 3-3(1)(D)(ii) prohibiting lot division by a right-of-way easement, both based on the findings of fact contained in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the Holloman Creek Estates Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### **Holloman Creek Estates Subdivision Conditions of Approval:**

##### **Roads**

1. The developer shall provide evidence of permanent legal access to the subdivision, to be reviewed and approved by OPG and the County Attorney's Office, prior to final plat approval. *Subdivision Regulations Article 5-1(5)(G), Forest Service and OPG recommendation.*
2. The developer shall include a provision in the covenants requiring lot owners to obtain a permit for roadway maintenance for Upper Miller Creek Road and Schwartz Creek Road from the Missoula Ranger District of the U.S. Forest Service (USFS), for each maintenance project, subject to review and approval by OPG and the County Attorney's Office, prior to final plat approval. The Homeowners Association shall obtain a general maintenance permit from the USFS prior to final plat approval. *Subdivision Regulations Article 3-1(B), Forest Service and OPG recommendation.*
3. A road maintenance statement shall appear on the face of the plat:

"The purchaser and/or owner of the lot or parcel understands and agrees that road construction, maintenance and snow removal shall be the obligation of the owner or Property Owners Association and that the County of Missoula is in no way obligated to perform such maintenance or upkeep."

The statement will also include notification that the road is used by the public for recreation and hunting purposes. *Subdivision Regulations Article 5-2(4) and OPG 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, based on benefit, for improvements to Miller Creek Road and Schwartz Creek Road, including, but not limited to, paving, curbs and gutters, non-motorized facilities, street widening and drainage facilities. 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.*

##### **Fire**

5. The developer, in consultation with a fire protection specialist, shall implement a fire protection plan adequate for protection of the subdivision from structure fires as well as from wildfire. The plan shall incorporate residential sprinklers and a source of water for protection from wildfires and other fires that originate outside the residence. It shall also discuss the necessity of homeowner responsibility for fire suppression and include a provision relieving the County of liability in the event of fire. The plan shall be reviewed and approved by the governing body prior to filing the final plat. *Subdivision Regulations Article 3-7, County Attorney's Office and OPG recommendation.*

##### **Wildlife**

6. Section 13 of the covenants (Living with Wildlife) shall be amended to state the following: "Boundary fencing of the 40 acre lots is discouraged. Any fencing along lot boundaries must be a wildlife-friendly fence that is no more than 3.5 feet tall and no lower than 18 inches at the bottom rail or smooth wire. No barbed wire is allowed. *Subdivision Regulations Article 3-13 and OPG recommendation.*



**Riparian**

7. The location of the Area of Riparian Resource shall be determined by Fish, Wildlife and Parks and OPG prior to final plat approval. *Subdivision Regulations Article 3-13 and OPG recommendation.*
8. The Area of Riparian Resource boundary shall be shown on the final plat and the site map of the Area of Riparian Resource shall be attached to the Riparian Management Plan, subject to review and approval by Fish, Wildlife and Parks and OPG prior to final plat approval. The “no build” zone for this area shall be re-labeled as a “no improvement” zone on the face of the plat. The final plat shall state the following:

“Area of Riparian Resource – structures, fences, motorized access and vegetation alteration are prohibited – See Covenants for more information.” *Subdivision Regulations Article 3-13, Montana Fish, Wildlife and Parks and OPG recommendation.*

9. The Riparian Management Plan shall be amended to provide the following in Section 13 (Riparian Resource Management Plan):
  - No new vehicular stream crossings.
  - Non-motorized stream crossings be constructed as bridges (versus culverts) to avoid stream sedimentation.
  - No motorized access in the Area of Riparian Resource.
  - Leave native vegetation as ground cover. Planting lawns and the use of fertilizers contribute to water quality problems.
  - Do not modify the ground or vegetation unless the change would enhance the riparian resources or keep it weed free.
  - Do not divert water from the streams except for emergency fire protection measures.

In addition, the Road Construction Guide shall be deleted from the covenants. The Riparian Management Plan in the covenants shall be reviewed and approved for these changes by Fish, Wildlife and Parks and OPG prior to final plat approval. *Subdivision Regulations Article 4-1(12) and OPG recommendation.*

10. Replace the second sentence in Section 4 of the covenants (Building Restrictions) with the following language: “Structures are not allowed in the Area of Riparian Resource.” *Subdivision Regulations Article 3-13(4)(B) and OPG recommendation.*

**Covenants**

11. The covenants shall be amended to delete the language authorizing Missoula County to enforce the covenants. It shall be replaced with language prohibiting amendment to the covenants relating to Garbage Handling, Riparian Resource Plan, Wildlife and Fire Protection, without permission of the governing body. *Subdivision Regulations Article 4-1(12) and OPG recommendation.*

**Health**

12. The covenants shall include a provision advising property owners of the Missoula City-County Health Department recommendation that all new construction incorporate passive radon mitigation systems. The language of the provision shall be subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-1(2) and City-County Health Department recommendation.*

**Consideration: Neilson Addition (5 Lots on 158 Acres) – off Mullan Road near Stone Container**

Jackie Corday, Office of Planning and Grants, presented the staff report.

This is a proposal from Barbara Howell requesting approval of Neilson Addition, a 5 lot subdivision of a 158 acre parcel located approximately 9 miles west of Reserve Street on Mullan Road. The property is accessed off Mullan Road and Fairbanks Lane, both of which are public paved roads. Lot 1 will be 3 acres and has an existing residence that will be removed. It will be used for mini-storage. Lot 2 is the Magnolia Estates Mobile Home Park approved in 1997. It is a 57 unit modular home community on 24 acres. Lot 3 will be a convenience store, approximately 4 acres in size. Lot 4 is a large agricultural parcel. Lot 5 is a 37 acre agricultural parcel that includes the original farm home on the property.

The property has gently rolling to level topography and has been used for agricultural production of hay and grazing. There is a large riparian area that extends along most of the southern border of the property along a slough of the Clark Fork River. Another riparian area located along the eastern boundary is connected to the Frenchtown Irrigation Ditch. Both have been designated on the Supplemental Data Sheet as riparian areas, “no improvement” zones.

When Magnolia Estates was approved as a Subdivision for Lease or Rent in 1997, there was a condition that a mini-storage be built by the owners on Lot 1 and a convenience store be built by May, 2004 on Lot 3. In order to achieve that condition, the lots need to be separate legal lots to obtain financing. The creation of the 37 acre parcel is for estate planning purposes.

Magnolia Estates is served by a public water system that was built specifically for the subdivision and a large shared drainfield. Both water and sewer systems are maintained by Magnolia Enterprises. The two commercial uses will have access to those systems. Frenchtown Rural Fire serves the property and they did not request any additional requirements.

Two variances are being requested. The first is from the requiring compliance with the Primary Travel Corridor landscaping standards for Lots 4 and 5. Mullan Road is included in the list of primary travel corridors. This is large acre farm property and having to install a number of trees would be beyond the intent of the regulations. Staff supports the variance request. There is a condition recommended, however, that a 50 foot setback be indicated on the final plat to show that is a Primary Travel Corridor. If anything is ever constructed on the property along Mullan Road, it would have to be set back 50 feet.

The second variance request is to not provide a system of pedestrian and/or bicycle circulation along Mullan Road and Fairbanks Lane. Both Public Works and OPG support the request because of the amount of frontage, approximately 2,200 feet, along Mullan Road. It would be a costly endeavor for the applicant. There is a recommended condition of an RSID/SID waiver for improvements to Mullan Road and Fairbanks Lane.

Condition 3 requires a development agreement be filed stating that the developer of Lots 1 and 3 (mini-storage and convenience store) shall pave the driveway and parking lots for those commercial uses. This was a suggestion from the Health Department and there has been no objection from the applicant.

Condition 4 is to indicate on the final plat that Lots 4 and 5 are subject to a development covenant. That was required with the 1997 approval of the lease or rent project. It designated the land as Open and Resource and refers back to the book and page where the development covenant was recorded.

Condition 6 is based on comments from Fish, Wildlife and Park and Long Range Planning to transfer the information from the Supplemental Data Sheet onto the final plat.

Condition 7 relates to filing a development agreement that will further explain what the restrictions are in the Riparian Resource Area (no improvement zone). Subsection "c" refers to wildlife friendly fencing. Where cattle are kept, there is a need for barbed wire. Where horses are fenced, smooth wire is used. Fencing based on livestock needs has already been installed, so staff recommends that Subsection "c" be deleted from Condition 7.

Condition 9 is a requirement to indicate the boundaries of the 100 year floodplain of the Clark Fork River. It will most likely be contained within the Riparian Resource Area. However, this was suggested by the Floodplain Administrator and is required as a separate condition.

Chairman Carey asked for public comments.

Barbara Howell, applicant, thanked Jackie for her efforts, and for the approval of Magnolia Estates in 1997. Lots 4 and 5 are currently used for cows and horses and that use will not change. The water and sewer systems were designed to support the convenience store and the storage units will not use water or sewer.

There were no further public comments.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-14 of the Missoula County Subdivision Regulations requiring compliance with the Primary Travel Corridor landscaping standards for Lots 4 and 5; and approve the variance request from Article 3-2(8)(A)(iii) of the Missoula County Subdivision Regulations to not provide a system of pedestrian and/or bicycle circulation along Mullan Road and Fairbanks Lane, both based on the findings of fact in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the Neilson Addition Subdivision, based on the findings of fact in the staff report and subject to the recommended conditions of approval, with the deletion of Subsection "c" of Condition 7. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### **Neilson Addition Subdivision Conditions of Approval:**

##### **Roads/Access**

1. A 50 foot wide setback along the eastern border of Lots 3, 4 and 5 shall be indicated on the final plat as a "Primary Travel Corridor Building Setback." *Subdivision Regulations Article 3-2(14)(3)(B) and OPG recommendation.*
2. The final plat shall contain an RSID/SID waiver statement that conforms with the language contained in Subdivision Regulations Section 3-2(3)(E) for future improvements to Fairbanks Lane and Mullan Road. *OPG recommendation.*
3. A Development Agreement for this subdivision shall be filed with the Missoula County Clerk and Records Office, subject to the review and approval by OPG and the County Attorney's Office, stating that the developer of Lots 1 and 3 shall pave the driveway and parking lots for the mini-storage and convenience store uses. *Subdivision Regulations Section 3-1(10), Health Department and OPG recommendation.*

##### **Agricultural Production and Water Rights**

4. The final plat shall label Lots 4 and 5 as follows: "Open and Resource – land for agricultural use – See development covenant recorded at Book 604, Page 523." *MCA 76-3-608(3)(a), MCA 76-3-608(4) and OPG recommendation.*
5. The applicant shall provide evidence of compliance with MCA 76-3-504(j) for irrigation water rights, subject to review and approval of the Frenchtown Irrigation District and the County Attorney's Office, prior to final plat approval. *OPG recommendation.*

##### **Riparian Area and Weeds**

6. The Riparian Areas indicated on the Supplemental Data Sheet shall be shown on the final plat and labeled as "Area of Riparian Resource – No Improvement Zone – See development agreement for more information. *Subdivision Regulations Article 3-13, Fish, Wildlife and Parks and OPG recommendation.*
7. A Development Agreement for this subdivision shall be filed with the Missoula County Clerk and Recorder's Office, subject to review and approval by OPG and the County Attorney's Office, and shall include the following terms:
  - a. This property contains Areas of Riparian Resource that are subject to a "No Improvement" zone as shown on the attached plat. The Riparian Area "No Improvement" zone prohibits structures, vehicle access (except for agricultural use and dam maintenance), any cutting, burning or removal of live or dead vegetation (except if needed for fire prevention or noxious weed control), filling with substances such as gravel, soil, slash or other

debris, or the planting of non-native vegetation such as lawn grasses. Planting of native riparian shrubs and trees, such as serviceberry, chokecherry, snowberry, red twig dogwood and aspen, is allowed and encouraged. *Subdivision Regulations Article 3-13(4)(B) and OPG recommendation.*

- b. Riparian Management Plan: Insert the language from the plan on Pages 20-21 of the application.
  - c. Lot owners shall maintain their lots in compliance with the Montana Noxious Weed Management Act and the Missoula County Noxious Weed Management Plan. Lot owners shall revegetate any ground disturbance caused by construction or maintenance with beneficial species at the first appropriate opportunity after construction or maintenance is completed. *Subdivision Regulations Article 3-1, 3-2(8)(J) and Missoula County Weed District recommendation.*
  - d. These covenants shall not be changed without governing body approval.
8. A Revegetation Plan for disturbed sites shall be submitted to and approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Section 3-1(1)(B), County Weed District and OPG recommendation.*

#### **Floodplain**

9. The boundaries of the 100 year floodplain of the Clark Fork River shall be indicated on the final plat. *Subdivision Regulations Article 5-2(3)(U) and Floodplain Administrator recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 3:00 p.m.

#### **THURSDAY, JULY 10, 2003**

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 to attend a funeral.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated July 7, 2003, with a grand total of \$2,670.58. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated July 8, 2003, with a grand total of \$4,706.84. The Claims List was returned to the Accounting Department.

#### **ADMINISTRATIVE MEETING**

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

Letter – The Commissioners signed a letter, dated July 9, 2003, to Victor Bjornberg, Travel Montana, Helena, supporting an application from the Historical Museum at Fort Missoula (the “Museum”) for a Travel Montana Tourism Infrastructure Investment Program (TIIP) Grant. The Trails Pathway Project has been proposed by the Museum, which will make more of the facility handicap accessible, as well as more “user friendly” for visitors to navigate the self-guided tour portion of the outdoor exhibits.

Letter – The Commissioners signed a cover letter, dated July 9, 2003, to Dr. Robert Brown, Historical Museum at Fort Missoula (the “Museum”), and enclosing a request from the Commissioners on behalf of the Salish-Kootenai College for a \$5,000 *Preserving Missoula County’s History Grant*. These funds would be used for The Hellgate Treaty Signage Project, and specifically for an interpretive exhibit at the site of the signing of the Hellgate Treaty – Council Groves, in Missoula County.

Resolution No. 2003-067 – The Commissioners signed Resolution No. 2003-067, dated July 10, 2003, a Resolution to rezone property described as COS 2687, Tract B (Phelps Addition), from C-A3 (Residential) to C-C2 (General Commercial). This property is located near the corner of West Broadway and Flynn Lane. No protests were filed during the protest period held for thirty (30) days after the first publication of the Resolution of Intent on June 8, 2003.

Other items included:

- 1) The Commissioners reviewed a letter from the Montana Department of Revenue regarding an estimate of current market value as if vacant for Lot 8 of Hansens Bitterroot Tracts that will be offered for sale by the County. The letter was forwarded to Chief Civil Deputy County Attorney Mike Sehestedt for further handling.

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

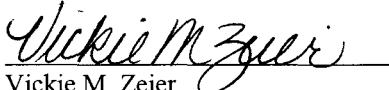
#### **FRIDAY, JULY 11, 2003**


The Board of County Commissioners met in regular session; all three members were present. In the evening, the Commissioners attended a dinner at the Museum of Mountain Flying at the Airport in conjunction with the Montana Airfest 2003.

Claims List – The Commissioners signed the Claims List, dated July 10, 2003, with a grand total of \$36,125.52. The Claims List was returned to the Accounting Department.

## SATURDAY, JULY 12, 2003

The Commissioners attended the Montana Airfest 2003 held at the Missoula International Airport.

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

## MONDAY, JULY 14, 2003

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Curtiss was in Washington, D.C. on July 14<sup>th</sup> and 15<sup>th</sup> meeting with members of the Congressional delegation.

Site Inspection

In the afternoon, Commissioner Evans accompanied Public Works Director Greg Robertson on a site inspection for the request for abandonment of an alleyway in the East Clinton Addition.

Claims Lists – Commissioners Carey and Evans signed four (4) Claims Lists, dated July 10, 2003, with the following grand totals:

- 1) \$205.69;
- 2) \$777.42;
- 3) \$1,783.27; and
- 4) \$72.00.

The Claims Lists were returned to the Accounting Department.

Agreement – The Commissioners signed an Agreement, dated July 10, 2003 between Missoula County and Hydro-Tech, Inc., Lehi, Utah, for the exterior restoration project of the Missoula County Courthouse. The contract sum is \$168,000.00. All other terms and conditions are set forth therein. The document was returned to Bidding Officer Doreen Culver for further signatures and handling.

## TUESDAY, JULY 15, 2003

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 July 15, 2003, with a grand total of \$89,884.25. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Evans signed three (3) Claims Lists, dated July 10, 2003, with the following grand totals:

- 1) \$6,500.43;
- 2) \$36,563.68; and
- 3) \$10,343.92.

The Claims Lists were returned to the Accounting Department.

Claims Lists – Commissioners Carey and Evans signed two (2) Claims Lists, dated July 14, 2003, with the following grand totals:

- 1) \$46,422.57; and
- 2) \$44,425.48.

The Claims Lists were returned to the Accounting Department.

Indemnity Bond – Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Ray Stenhouse, Frenchtown, as Principal for Missoula County Payroll for FRFD Warrant #277967, issued July 11, 2003 in the amount of \$498.22 (for wages), which cannot be found.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 14 - Pay Date: July 11, 2003. Total Missoula County Payroll: \$964,966.98. The Transmittal Sheet was returned to the Auditor's Office.

ADMINISTRATIVE MEETING

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

Resolution No. 2003-068 – The Commissioners signed Resolution No. 2003-068, dated July 15, 2003, a Budget Amendment for Fiscal Year '03 for various departments, reflecting a total of \$74,066.57 in spending authority to all departments for postage, rather than everything being charged to Central Services. This Amendment adopts this action as part of the Fiscal Year 2003 Budget for Missoula County.

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Maureen Castillo for medical transcription services for Partnership Health Center. This contract is on an on-going basis beginning June 26, 2003. The total amount shall not exceed \$.12 per line of medical transcription.

Agreement – The Commissioners signed a Sanitary Sewer Grant Program Agreement for Full Assistance to Owner-Occupied Household Secured by Real Property, as part of a program funded by HUD/State Community Development

Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. The Agreement, dated June 30, 2003, with Tammy L. (Gore) Dubois, 405 Speedway Avenue, provides funds for sewer improvements and connection to the City of Missoula municipal sewer system. All fees and connection costs are set forth therein.

Agreement – The Commissioners signed a Lease Agreement, dated January 1, 2003, between the Missoula County Office of Planning and Grants (“OPG”) and Chris and Marie-Ange Buzan, for property located at 127 West Spruce Street, Missoula (former office of the Weed Control Board). This lease updates the tenant status and also reflects the yearly rent increase, which will be based on the Consumer Price Index of the previous twelve months. The lease will expire on December 31, 2005. The document was returned to Linda Jordan at OPG for further signatures and handling.

Resolution No. 2003-069 – The Commissioners signed Resolution No. 2003-069, dated July 15, 2003, a Resolution to Adopt Amendments to the Missoula County Animal Ordinance, effective August 8, 2003. Three public hearings were held on the proposed amendments; the ordinance was adopted at the public hearing on July 9, 2003.

Signature Pages – The Commissioners reviewed and signed two (2) Claims Signature Pages for the Larchmont Golf Course Accounts Payable Invoice Register as follows: 1) dated July 1, 2003, in the amount of \$12,218.96; and 2) dated July 10, 2003, in the amount of \$34,236.75. The Signature Pages were returned to the County Auditor.

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

### WEDNESDAY, JULY 16, 2003

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Curtiss was in Baltimore, Maryland through Friday, July 18<sup>th</sup>, for the NALBOH (National Association of Local Boards of Health) Conference.

Claims List – Commissioners Carey and Evans signed the Claims List, dated July 10, 2003, with a grand total of \$6,900.00. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Evans signed two (2) Claims Lists, dated July 15, 2003, with the following grand totals:

- 1) \$1,712.30; and
- 2) \$23,429.43.

The Claims Lists were returned to the Accounting Department.

Claims List – Commissioners Carey and Evans signed the Claims List, dated July 16, 2003, with a grand total of \$11,593.68. The Claims List was returned to the Accounting Department.

### CHIEF ADMINISTRATIVE OFFICER MEETING

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

Budget Transfer – The Commissioners signed Budget Transfer Control No. 03-048 reflecting a \$79,741 transfer from the Development Park to Financial Administration to reimburse the General Fund for the “Special Project” department expenses in Fiscal Year '98.

Task Order – Chairman Carey signed Task Order No. 04-07-5-01-032-0 to the Missoula County Master Contract that covers the period July 1, 1998 through June 30, 2005 (Maternal and Child Health (“MCH”)) between the Montana Department of Public Health and Human Services and Missoula County for the performance of services to comply with the requirements of ARM 37.57.1001 governing the MCH Block Grant. The term will be July 1, 2003 through June 30, 2005. Compensation and all other terms and conditions are set forth therein. The document was returned to the Health Department for further signatures and handling.

Task Order – Chairman Carey signed Task Order No. 03-07-4-31-031-0 to the Missoula County Unified Government Master Contract that covers the period January 1, 2003 through December 31, 2003 between the Montana Department of Public Health and Human Services and Missoula County to conduct and provide fiscal management for activities relating to the Immunization Program. The term will be January 1, 2003 through December 31, 2003. The total amount shall not exceed \$20,886.00. All other terms and conditions are set forth therein. The document was returned to the Health Department for further signatures and handling.

Contracts – The Commissioners signed eleven (11) Professional Services Contracts between Missoula County and the following contractors for services related to the Western Montana Fair (“WMF”), as follows:

- 1) With Pat Dodson (Missoula, MT), Clerk of Scales for WMF Horse Racing. The total compensation shall not exceed \$375; the term is August 5 through August 10, 2003;
- 2) With Phil Benson (Missoula, MT), Announcer for WMF Horse Racing. The total compensation shall not exceed \$750; the term is August 5 through August 10, 2003;
- 3) With Bill Oschner (Missoula, MT), organ player for WMF. The total compensation shall not exceed \$1,000; the term is August 5 through August 10, 2003;
- 4) With Kevin Koeplin (Florence, MT), Race Program delivery person for WMF Horse Racing. The total compensation shall not exceed \$390; the term is August 4 through August 10, 2003;
- 5) With Mary Wallace (Kalispell, MT), Horsemen’s Bookkeeper for WMF and Horse Racing. The total compensation shall not exceed \$1,890; the term is August 3 through August 10, 2003;

- 6) With Holly Burrows, Assistant Racing Secretary for WMF Horse Racing. The total compensation shall not exceed \$900; the term is August 4 through August 10, 2003;
- 7) With Sandy Swensrud, Lead Test Barn Assistant for WMF Horse Racing. The total compensation shall not exceed \$540; the term is August 5 through August 10, 2003;
- 8) With Shorty Martin, Racing Secretary for WMF and Horse Racing. The total compensation shall not exceed \$2,800; the term is August 3 through August 10, 2003;
- 9) With Walt Horning (Spokane, WA), Deputy Steward for WMF Horse Racing. The total compensation shall not exceed \$1,200; the term is August 4 through August 10, 2003;
- 10) With John Regan (Townsend, MT), Track Steward for WMF Horse Racing. The total compensation shall not exceed \$1,200; the term is August 4 through August 10, 2003; and
- 11) With Dr. Jack Rea (Three Forks, MT), Track Veterinarian for WMF Horse Racing. The total compensation shall not exceed \$2,400; the term is August 5 through August 10, 2003.

The contracts were returned to Toni Hinton at the Western Montana Fair for further signatures and handling.

Other items included:

- 1) The Commissioners authorized Chairman Carey to sign (at a later date) the Contract with Paradigm Architects for the Ice Rink retrofit and Additions at the Fairgrounds.

#### **PUBLIC MEETING – July 16, 2003**

The Public Meeting was called to order at 1:30 p.m. by Chairman Bill Carey. Also present were Commissioner Barbara Evans, Chief Civil Deputy County Attorney Mike Sehestedt and Public Works Director Greg Robertson. Commissioner Jean Curtiss was attending the National Association of Local Boards of Health Conference in Baltimore, MD.

#### **Pledge of Allegiance**

#### **Public Comment**

None

#### **Routine Administrative Actions**

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$313,824.38. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

#### **Hearing: Halling Farms Rezoning – Mullan Road west of Reserve**

Monte Sipe stated that he received an e-mail from Gilbert Larson, Professional Consultants, Inc., developer's representative for Crowne Brook Investments LLC. They have requested that the hearing on the Halling Farms Rezoning be postponed to September 10, 2003. To satisfy the legal requirements for notification for rezoning, the Board needs to announce a date and time certain for when the hearing will occur.

Mike Sehestedt stated that the Board needs to continue consideration of this request to a date and time certain. He also asked that the developer's representative confirm for the record that the postponement is agreeable to the applicant.

Gilbert Larson, PCI, stated for the record that the request for postponement to September 10, 2003 is agreeable to the applicant.

Commissioner Evans moved that the Board of County Commissioners postpone any further action on the Halling Farms Rezoning request to September 10, 2003, as agreed to by the developer through his representative. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

#### **Bid Award: Maclay Bridge Project (Public Works)**

Greg Robertson presented the staff request.

This is a request to award a bid for the Maclay Bridge Deck Replacement project. Bids were advertised with six vendors responding, including:

Bidder	Bid Total
Diamond Construction	\$90,711.00
Frontier West	\$62,516.00
Jackson Construction Group	No Bid
JTL Group, Inc.	\$67,972.80
Triple A Construction	\$86,776.00
Pew Construction	\$99,044.00

After careful review, it is the recommendation of the Public Works Department to award the bid for the Maclay Bridge Deck Replacement project to Frontier West in the amount of \$62,516.00. The Engineer's estimate for the project was \$100,000.

Commissioner Evans moved that the Board of County Commissioners approve awarding the bid for the Maclay Bridge Deck Replacement project to Frontier West in the amount of \$62,516.00 as the lowest and most responsive bidder. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

**Bid Award: Window and Stair Restoration – Courthouse (Facilities Management)**

Chairman Carey stated that the bid award for Window and Stair Restoration on the Courthouse had been postponed to July 23, 2003.

**Decision: Petition to Abandon an Alleyway in East Clinton Addition**

Chairman Carey continued the public hearing.

This is a petition to abandon an “alleyway between Lots 7 through 8 and 9 through 10 in Block 4 of East Clinton Addition located in Missoula County, Montana.”

The reason for the request is to allow for the complete and total fencing of privately owned properties on Lots 7, 8 and 9 in Block 4 of the East Clinton Addition.

The following landowners have been notified: Jesse R. and Carey James; Stephen and Sabrina Bayha; David and Debbie Lorenzo; and James B. Jr. and Karla K. Taylor.

Greg Robertson stated that he and Commissioner Evans conducted a site inspection on Monday, July 14, 2003. The alley is non-existent and could not be constructed as there are homes that would have to be relocated and a hill would have to be removed. He had no objection to abandoning the alleyway.

Commissioner Evans stated that she concurred with Greg’s recommendation.

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

Commissioner Evans moved that the Board of County Commissioners approve the petition to abandon an “alleyway between Lots 7 through 8 and 9 through 10 in Block 4 of East Clinton Addition located in Missoula County, Montana.” Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

**Hearing (Certificate of Survey): Iverson Family Transfer**

Chairman Carey opened the public hearing.

Mike Sehestedt 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 5314 located in Section 33, Township 21 North, Range 16 West.

Ronald C. and Pamela K. Iverson have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 176 acres in size located near Condon, Montana. Ronald and Pamela Iverson propose to create one approximately 75.25 acre parcel for transfer to their son, Ross Iverson, for residential purposes, and keep the remaining approximately 100.75 acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 5314	2002	Boundary Relocation	Ronald and Pamela Iverson and Jack Bert	

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

Toby Dumont, PCI, representing the Iversons, was present and came forward to answer any questions the Board may have.

Commissioner Evans asked Mr. Dumont if this was truly a family transfer request.

Toby Dumont stated that is what the Iverson’s have conveyed to him; to the best of his knowledge, this is truly a family transfer and not an attempt to evade subdivision review.

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

Commissioner Evans moved that the Board of County Commissioners approve the request by Ronald and Pamela Iverson to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

**Hearing (Certificate of Survey): Bert Family Transfer**

Chairman Carey opened the public hearing.

Mike Sehestedt presented the staff report.



This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 1 of COS 5314 located in Section 33, Township 21 North, Range 16 West.

Jack M. Bert has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 140 acres in size located near Condon, Montana. Jack Bert proposes to create one approximately 79.81 acre parcel for transfer to his wife, Mary L. Bert, for residential purposes and keep the remaining approximately 60.21 acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 5314	2002	Boundary Relocation	Ronald and Pamela Iverson and Jack Bert	

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

Toby Dumont, PCI, representing Mr. Bert, was present and came forward to answer any questions the Board may have.

Chairman Carey asked Mr. Dumont if this was truly a family transfer request.

Toby Dumont stated that, to the best of his knowledge, this is truly a family transfer and not an attempt to evade subdivision review. The Bert's are doing some estate planning.

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

Commissioner Evans moved that the Board of County Commissioners approve the request by Jack M. Bert to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Chairman 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 1:45 p.m.

THURSDAY, JULY 17, 2003

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 July 17, 2003, with a grand total of \$194,547.72. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

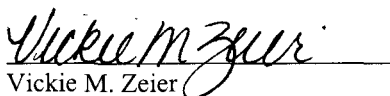
Contract Amendment – The Commissioners reviewed and signed a letter to Steve Kent of Superior Yard Care, approving his request to amend the July 1, 2003 contract between Missoula County and Superior Yard Care for mowing services on County owned land within the Missoula Development Park. Due to nine extra hours of work beyond what the contract allowed, the amount paid for mowing was increased by \$252, amending the total contract amount from \$2,500 to \$2,749.60.

Request for Action – Per the recommendation of the County Park Board, the Commissioners approved an award to Horizon Tree Service to perform a forest rehabilitation/fire mitigation project in Mockingbird Park, located on Upper Miller Creek Road and Mockingbird Way. The total cost of the project will be \$775 (of which 50% will be provided by a DNRC Fire Mitigation Grant). The request was returned to Lisa Moisey, Parks Coordinator, for further handling.

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

FRIDAY, JULY 18, 2003

The Board of County Commissioners did not meet in regular session. Commissioner Evans was out of the office all day. In the afternoon, Commissioner Carey attended a Mental Health Board Meeting held at Fort Missoula.

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

MONDAY, JULY 21, 2003

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 evening, Commissioner Curtiss attended the "Barbeque and Potluck Appreciation Dinner" for Department Superintendents at the Fairgrounds.

Claims Lists – Commissioners Carey and Curtiss signed two (2) Claims Lists, dated July 17, 2003, with the following grand totals:

- 1) \$2,258.67; and
- 2) \$1,700.25.

The Claims Lists were returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated July 18, 2003, with a grand total of \$123,985.22. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated July 21, 2003, with a grand total of \$36,317.14. The Claims List was returned to the Accounting Department.

Resolution No. 2003-071 – The Commissioners signed Resolution No. 2003-071, dated July 21, 2003, an Emergency Proclamation announcing that the Governor has declared that a state of emergency exists in the State of Montana (as of July 23, 2003) due to wildland fires and the adoption of Stage I Fire Restrictions for state and federal lands. The Proclamation also states that fire restrictions will be in effect on all private land in Missoula County as of 00.01, July 23, 2003.

Resolution No. 2003-070 – The Commissioners signed Resolution No. 2003-070, dated July 21, 2003, a Resolution to annex to the Florence Rural Fire District a parcel of land located in Missoula County described as follows: “Two parcels shown on COS 3935 located in the N½ NE¼ SW¼ and the S½ NE¼ SW¼ of Section 23, T 11 N, R 20 W, in Missoula County, Montana.” A public hearing was held on this matter on June 25, 2003; no protests were received.

Agreement – Chairman Carey signed an Agreement, dated July 21, 2003, for Engineering Services between Missoula County and HDR Engineering, Inc. for the planning and execution of the Grant Creek Environmental Restoration/Flood Control Project in accordance with an established schedule and budget while exceeding quality expectations. The total cost of the project is estimated to be \$581,155.96 (which is partially funded at this time by the U.S. Army Corps of Engineers.) The completion date is estimated to be July 21, 2004. All other terms and conditions are set forth therein. The document was returned to Public Works Director Greg Robertson for further signatures and handling.

#### TUESDAY, JULY 22, 2003

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

Claims List – The Commissioners signed the Claims List, dated July 22, 2003, with a grand total of \$324,563.69. The Claims List was returned to the Accounting Department.

Replacement Warrant – Chairman Carey examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Geneva G. Berryman, Clinton, Montana, as applicant for Bonner School District 14 Warrant #5258, issued June 20, 2003 on the Missoula County General Fund in the amount of \$642.92 (for wages), which was not received in the mail. No bond of indemnity is required.

#### ADMINISTRATIVE MEETING

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

Agreement – The Commissioners signed an Agreement between the Montana Department of Transportation and the Missoula Office of Planning and Grants (“OPG”), for the administration and distribution of Federal Congestion and Mitigation funding for the Missoula In Motion Program. The total amount of the agreement is \$235,000. The term will be for Fiscal Year 2004. All other terms and conditions are set forth therein. The document was returned to Mike Kress at OPG for further signatures and handling.

Agreement – The Commissioners signed a Subordination Agreement, dated July 22, 2003, between the Missoula County Sewer Connection Loan Program and Samuel G. and Lisa J. Lee, 426 Speedway Avenue, Missoula. This agreement places Missoula County’s sewer loan (East Missoula Sewer Project) in second position behind the residence’s financing. The document was returned to Jack Owens of Stewart Title for further signatures and handling.

Agreement – Chairman Carey signed a Non-Disclosure & Ongoing Maintenance Agreement, dated July 22, 2003, between Missoula County and Blackfoot Telephone Cooperative, Inc. for their services in providing information for the E-911 Master Street Address Guide and its related databases. All other terms and conditions are set forth therein. The document was returned to Jane Ellis, Director of Emergency Services, for further signatures and handling.

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Gary Koepplin for his services as Director of Horse Racing for the Western Montana Fair. The total amount shall not exceed \$2,500. The term will be August 1, 2003 through August 10, 2003. The document was returned to Eunice Misbe at the Fairgrounds for further signatures and handling.

Proclamation – The Commissioners and Mayor Mike Kadas signed a Proclamation declaring August 2 and August 3, 2003 as *Southgate Mall 25<sup>th</sup> Anniversary Celebration Weekend*, and proclaiming support for the Mall’s charitable efforts and encouraging public and private businesses to do the same. The document was given to Commissioner Evans for presentation on August 2, 2003.

Agreement – The Commissioners signed an Agreement between the Missoula City-County Health Department and the Frenchtown School District for the provision of a Public Health Nurse for the 2003-2004 school year (August 2003 through June 2004). The total amount shall not exceed \$49,168.27. All other terms and conditions are set forth therein. The document was returned to the Health Department for further signatures and handling.

Agreements – The Commissioners signed three (3) Sanitary Sewer Grant Program Agreements for Assistance to Owner-Occupied Households Secured by Real Property, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. The Agreements provide funds for sewer improvements and connection to the City of Missoula municipal sewer system, as follows:

- 1) Agreement for full assistance, dated July 16, 2003, with Kylee A. Seitz, 610 Montana Avenue;
- 2) Agreement for partial assistance, dated July 16, 2003, with Diane C. Olson, 412 Colorado Avenue; and
- 3) Agreement for partial assistance, dated July 18, 2003, with Sandra D. Hart, 528 Speedway Avenue.

All sewer development fees and on-site connection costs and fees are as set forth therein.

Agreement – The Commissioners signed a Protective Covenants and Development Agreement, dated July 11, 2003 between Missoula County and Robert C. and Kathleen M. Harlock, owners of the Seeley Lake Motor Lodge Subdivision (Tract A, COS 3181). This agreement is intended to meet the July 18, 2001 subdivision conditions of approval. The document was returned to Eli & Associates for filing.

Other items included:

- 1) The Commissioners were briefed on a Federal Office of Justice Programs/Violence Against Women Office two-year grant awarded to the YWCA which would establish a Safe Haven Supervised Visitation Center in Missoula for supervised exchange and visitation of children who have divorced parents, or families that have experienced domestic violence, sexual assault, child abuse or stalking. The YWCA will be looking for grants for implementation and maintenance funding.

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

### WEDNESDAY, JULY 23, 2003

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

Claims List – The Commissioners signed the Claims List, dated July 16, 2003, with a grand total of \$46,510.22. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated July 22, 2003, with a grand total of \$1,637.00. The Claims List was returned to the Accounting Department.

### CHIEF ADMINISTRATIVE OFFICER MEETING

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

Amendment – Per authorization of the Commissioners, Chief Administrative Officer Ann Mary Dussault signed an amendment, dated July 23, 2003, to the (City/County) Enforcement Contract #03-03(402/405) with the Montana Department of Transportation, increasing funds for two additional overtime patrols (to maintain higher visibility of enforcement for impaired driving and occupant protection laws) during August and September, 2003. The new total amount of funds is \$20,000. The document was forwarded to Don Morman in the Sheriff's Department for further signatures and handling.

Agreement – The Commissioners signed an Agreement, dated July 23, 2003, between Missoula County and Frontier West, LLC, for the construction of a new deck on Maclay Bridge in Missoula. Frontier West was the low bidder for this project, in the amount of \$62,516.00; the contract was awarded on July 16, 2003. All other terms and conditions are set forth therein.

Agreement – The Commissioners signed an Agreement, dated July 23, 2003, between Missoula County and JTL Group, Inc., for the road construction of Beeler Road in Huson, Montana. JTL Group was the low bidder for this project, in the amount of \$66,288.70; the contract was awarded on July 9, 2003. All other terms and conditions are set forth therein.

Signature Page – The Commissioners reviewed and signed one (1) Claims Signature Page for the Larchmont Golf Course Accounts Payable Invoice Register dated July 16, 2003, in the amount of \$26,484.93. The Signature Page was returned to the County Auditor.

Other items included:

- 1) A discussion was held on a draft Notice of Hearing on Intention to Levy Tax for the Seeley Lake Sewer District.
- 2) A discussion was held regarding the Americans with Disabilities Act of 1990 Compliance Review (Project Civic Access), to be conducted in Missoula County by the Department of Justice in August of 2003.
- 3) The Commissioners approved a memorandum to Missoula County Department Heads from Steve Johnson, Director of Human Resources, setting Personnel Plan Pay Increases for FY 2004. All non-probationary personnel plan employees will receive across-the-board pay increases of: (1) 2% effective July 6, 2003; and (2) 2% effective January 4, 2004.

### PUBLIC MEETING – July 23, 2003

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

### Pledge of Allegiance

### Public Comment

None

**Routine Administrative Actions**

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$694,966.37. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Bid Award: Window and Stair Restoration – Courthouse (Facilities Management) – Postponed from July 16, 2003**

Chairman Carey stated that the bid award for Window and Stair Restoration at the Courthouse had been postponed again to July 30, 2003. Facilities Management is waiting for additional information on the bids.

**Hearing (Certificate of Survey): Almer 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 as Tract 16 of COS 3229, located in Section 22, Township 13 North, Range 16 West.

Roger T. and Bobbe R. Almer have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 21.23 acres in size located near Potomac, Montana. Roger and Bobbe Almer propose to create one approximately 10.61 acre parcel for transfer to their daughter, Aimee Kathleen Vitateau, for residential purposes, and keep the remaining approximately 10.62 acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 3229	1984	None	Bulah and William Wills	

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

Aimee Vitateau was present and came forward to answer any questions the Board may have.

Chairman Carey stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. He asked Ms. Vitateau if she was going to receive this land from her parents.

Aimee Vitateau stated that she and her husband planned to build a house and live 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 Roger T. and Bobbe R. Almer to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Chairman Carey stated that the Almers would receive a letter of approval within a week or two. All necessary permits and other requirements need to be obtained to build on the land. The approval today is only for the division of land.

**Consideration: Clark Estates (2 lots on 16.7 acres) – off Highway 93, north of Evaro**

Tim Worley, Office of Planning and Grants, presented the staff report.

This is a proposal by Bud Clarke, represented by Becky Weaver of PCI, to divide a 16.7 acre parcel into two lots, one 3.6 acres in size and the other 13.1 acres in size. All improvements are existing and no new improvements are proposed. The property is located at 18005 U.S. Highway 93 North in Evaro. It is outside the Urban Growth Area.

The developed portion of the property has an east-facing slope. There is a northeast trending topographic break that divides the improved areas of the property from the unimproved areas. The unimproved area is a large wetland that has been designated a “no improvement zone.” Immediately adjacent to that, there is an additional 50 foot riparian buffer that has also been designated a “no improvement zone.”

The property is unzoned. The Comprehensive Plan recommended density is one dwelling unit per 10 acres. However, the property is within the Evaro Activity Circle.

A shared driveway provides access to the property. The plat shows a 54 foot private access easement along the eastern edge of the property in anticipation of Highway 93 improvements. This would provide for future access for both parcels if the alignment of Highway 93 changes. There is also a 50 foot Primary Travel Corridor setback shown on the plat. The first variance request is from the Primary Travel Corridor setback standard. The applicants are asking for a variance to the standard because a portion of the mobile home that exists on the smaller lot is actually within the corridor. The request is supported by OPG and Public Works.

The second variance request is from driveway grade standards. There are portions of the split driveway that are in excess of 8% grade. This is an existing driveway and alterations in order to meet the regulations would not be practical. The request is supported by both OPG and Public Works.

The third variance request is from providing a water source for fire protection purposes. The plat contains a waiver of the right to protest an RSID/SID for community or municipal water for fire fighting purposes. There were no objections to this proposal from the Frenchtown Rural Fire District or Public Works. It is also important to note that the fire station is within one-half mile of the property.

Staff recommends approval of the three variance requests and the subdivision proposal, subject to two conditions. One is for wildlife-friendly fencing if any is installed and the second is for an RSID/SID waiver on the face of the plat for improvements to the streets and installation of non-motorized facilities.

Chairman Carey asked for public comments.

Becky Weaver, PCI, developer's representative, thanked staff for their work on this project. The applicant is in agreement with the conditions recommended.

Commissioner Evans asked where the County got the right to tell people what kind of fence to build.

Colleen Dowdall stated that the recommendation for wildlife-friendly fencing comes from Fish, Wildlife and Parks comments. The condition has been revised somewhat so that fencing is discouraged, but if it is installed, it must be wildlife-friendly. This issue has been dealt with on many subdivisions lately. In some cases, it has been determined that the wildlife-friendly requirement is appropriate as a recommendation in the covenants. If horses or other livestock are anticipated on the property, the recommendation may need to be modified.

Becky Weaver stated that Mr. Clarke did not have a problem with the wildlife-friendly fencing recommendation.

Commissioner Curtiss stated that the requirement for wildlife-friendly fencing is mitigation because of the wildlife in the area.

Colleen Dowdall stated that it is typically included in a Development Covenant because the County doesn't have the ability to enforce it after the fact. It is usually required to be in the covenants.

There were no further public comments.

Commissioner Curtiss asked about the structure that already exists in the Primary Travel Corridor setback. It is a mobile home. Would that preclude trading in the mobile home for another one.

Tim Worley stated the variance is allowing the mobile home to stay in its present location. The variance doesn't have any provisions for the siting of any future mobile homes. If a new trailer were placed on the property it would have to be placed outside of the 50 foot setback.

Colleen Dowdall stated that Primary Corridor Standards are only triggered by subdivision review. If one mobile is removed and another installed, those standards would not be triggered. If another structure was added, it would undergo review as a lease or rent subdivision and the new mobile would have to be moved to comply with the setback.

Becky Weaver stated that the Primary Travel Corridor standards state that no new structures are allowed within the setback. This will be within the highway right-of-way once Highway 93 is reconfigured. When that happens, there will be restructuring of the roads and driveways.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-14(3)(B) of the Missoula County Subdivision Regulations to allow an existing structure within a Primary Travel Corridor; approve the variance request from Section 3-2(10)(B) of the Missoula County Subdivision Regulations to exceed the maximum driveway grade of 8 percent; approve the variance request from Section 3-7(1) of the Missoula County Subdivision Regulations to not provide a water source for fire protection, all based on the findings of fact in the staff report; and approve the Clarke Estates Summary Subdivision, based on the findings of fact in the staff report and subject to the recommended conditions of approval. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### **Clarke Estates Summary Subdivision Conditions of Approval:**

1. The Clarke Estates Development Covenant shall be amended prior to final plat approval by adding the following language: "Fencing is discouraged along the boundary lines of both proposed lots and adjacent to or within the "no improvement zone." Any fencing in these areas must be a wildlife-friendly fence (no barbed-wire or chain-link) that is no more than 3.5 feet tall and no lower than 18 inches at the bottom rail or smooth wire. *Subdivision Regulations Article 3-1(2), 3-1(10) and OPG recommendation.*
2. The developer shall include an RSID/SID waiver on the plat that states the following:  
  
"Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future RSID/SID, based on benefit, for upgrading the streets within the subdivision, including, but not limited to, paving, curbs and gutters, non-motorized facilities, street widening and drainage facilities and may be used in lieu of their signatures on an RSID/SID petition." *Subdivision Regulations Article 3-2(3)(E) and County Attorney's Office recommendation.*

#### **Consideration: Drake Estates (2 lots) – Trails End Road, Upper Miller Creek**

Liz Mullins, Office of Planning and Grants, presented the staff report.

Delmar and Agnes Drake, represented by Becky Weaver of PCI, are proposing to create Drake Estates, a 2 lot minor subdivision. Lot 2A is proposed to be 10.12 acres in size and Lot 2B is proposed to be 10.10 acres in size. The property is located west of Trails End Road in Upper Miller Creek on a westerly facing slope. The property is accessed via Upper Miller Creek Road then turning south onto Trails End Road for approximately two miles. The property is located on the west side of Trails End Road. It is within the Building Permit Jurisdiction and outside the Urban Growth Area.

The property is unzoned. The 1997 Miller Creek Area Plan Amendment designates the property as "Residential," with a recommended maximum residential density of one dwelling unit per five acres. The proposal is to divide the 20.23 acre parcel into two lots of approximately the same size (10.10 acres and 10.12 acres).

The property is open grassland, with small shrubs in the ravine, located along the northern boundary of the site. Slopes greater than 25 percent along the ravine have been designated as "no build zones" on the plat. The applicant is proposing a Development Covenant which addresses Weed Control, Wildland/Residential Interface Standards, Living with Wildlife and Residential Sprinkler requirements.

Trails End Road, adjacent to the east of this site, is an existing 24 foot wide paved County maintained road within a 60 foot right-of-way. The grade ranges between 4% and 6% on Trails End Road adjacent to this subdivision. Trails End Road meets the County Subdivision Regulations for street width and right-of-way design. Both lots are proposed to access off of Trails End Road via individual driveways. There are no variances being requested.

Conditions of approval include:

- An RSID/SID waiver for improvements to Trails End Road.
- A contribution to the fund for Miller Creek Road improvements in the amount of \$1,800 per new lot.
- A Development Covenant addressing dead-end driveway standards.
- A provision requiring that each lot owner post addresses at the access entrance on Trails End Road.
- A requirement that all homes install residential sprinkler systems.
- Advise property owners that all new construction incorporate passive radon mitigation.

Chairman Carey asked for public comments.

Becky Weaver, PCI, developer's representative, thanked Liz for her work on this proposal. The developer has requested that she inform the Board that they are opposed to the \$1,800 per lot contribution to the Miller Creek Road improvement fund.

Commissioner Curtiss asked if this property was already within the Rural Fire District.

Becky Weaver stated that it is within the Fire District.

Commissioner Evans stated that this property was quite far up Miller Creek. With the uncertainties of recent legislation, she questioned how it could be included in the Building Permit Jurisdiction.

Greg Robertson stated it is within the 4.5 mile radius for Building Permit Jurisdiction.

Colleen Dowdall stated that new regulations outside the City limits (the donut) do not go into effect until October 1, 2003.

Greg Robertson stated that the City will follow through with the inspection on any building permit applied for before October 1, 2003, even if the inspection happens after that date.

Colleen Dowdall stated it would not apply to subdivisions approved prior to October 1st, if they have not applied for a building permit prior to October 1st.

There were no further public comments.

Commissioner Evans moved that the Board of County Commissioners approve the Drake Estates Subdivision, based on the findings of fact and recommended conditions in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### **Drake Estates Subdivision Conditions of Approval:**

##### **Roads/Driveways**

1. The final plat shall include the following statement:

"Acceptance of a deed for a lot within this subdivision shall constitute assent of the lot owner to waive the right to protest any future RSID/SID for improvements to Trails End Road, including, but not limited to, paving, curbs and gutters, non-motorized facilities, street widening and drainage facilities, 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(7).*

2. The applicant shall contribute to the fund for Miller Creek Road improvements in the amount of \$1,800 per new lot, prior to final plat. *Subdivision Regulations Article 4-12 and Public Works recommendation.*
3. The Development Covenant shall be amended under Section K to include the following statement: "Dead-end driveways in excess of 150 feet in length shall be provided with approved provisions for turning around for fire apparatus. A minimum unobstructed width of not less than 20 feet and unobstructed vertical clearance of 13 feet, 6 inches for any driveway over 150 feet in length shall be provided. The driveway surface must be an all weather surface capable of supporting the weight of fire apparatus." *Subdivision Regulations Article 3-2(10)(E).*

**Fire Protection**

4. The Development Covenant shall include a provision requiring that each lot owner shall post addresses at the access entrance on Trails End Road and the numbers shall be at least six inches high and must identify the property, subject to review and approval by the Missoula Rural Fire District. *Subdivision Regulations Article 3-7(2) and Missoula Rural Fire District recommendation.*
5. The Development Covenant shall be amended under Section J to state that: "All homes shall install residential sprinkler systems for fire protection. Prior to beginning construction, the landowner shall contact Missoula Rural District for information regarding the fire sprinkler requirement." The Development Covenant shall be filed with the Missoula County Clerk and Recorder providing the requirement for residential sprinklers, subject to review of the County Attorney's Office and OPG. *Subdivision Regulations Article 3-2(10)(E), 3-7(1)(E), County Attorney's Office and OPG recommendation.*

**Health**

6. The Development Covenant shall include a provision advising property owners of the Health Department recommendation that all new construction incorporate passive radon mitigation systems and that the installation of wood burning stoves or fireplaces is prohibited. The language of the provision shall be subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-1(2) and City-County Health Department recommendation.*

**Consideration: Langel Addition (2 lots on 24 acres) – Trails End Road, Upper Miller Creek**

Jackie Corday, Office of Planning and Grants, presented the staff report.

Craig Langel, represented by Becky Weaver of PCI, is requesting approval to split a 24.64 acre parcel into 2 lots. The property is located 1.5 miles south of the junction of Miller Creek Road and Trails End Road in the Upper Miller Creek area. Lot 10B has direct access to Trails End Road, which is a paved, County maintained road. Lot 10A will be accessed off a private road that extends off of Evans Ridge Road. Evans Ridge Road is a 24 foot wide County maintained, paved road that connects to Trails End Road. The private road extension from Evans Ridge Road is a 24 foot wide gravel private road.

The property is within the Miller Creek Land Sensitive Zoning District. The property is split between Zone C and Zone B of the zoning district. In the center of the two lots is a large swath of designated open space in the zoning district. There is one development right for each lot in each of the two zones, so the proposal is in compliance with the zoning requirements and also complies with the Comprehensive Plan for the area.

There are two variances being requested. One is to not provide internal pedestrian connections which Public Works and OPG support. The other is to exceed an 8% grade for the private road. There is not a way to meet the 8% grade requirement without installing several switch-backs. Public Works felt that for this short section of the road that is only used by two residences, the variance would not result in a threat to public safety, health or welfare. OPG also support the variance request.

Condition 1 requires a contribution of \$1,800 per new lot to the Miller Creek Road improvement fund. Condition 2 advises lot owners of the Bonneville Power Administration easement.

The property is not within the Missoula Rural Fire District. It will need to petition into the district as required in Condition 4. Residential sprinkler systems have been proposed. There is a statement on the plat and in the covenants stating that homeowner needs to install residential sprinklers, but staff also wanted plans for installation approved by Missoula Rural Fire District, as required by Condition 5.

Condition 6 concerns fencing. In the description of the Miller Creek Zoning District there is discussion about the purpose of the open space to maintain wildlife corridors through the area. The property is adjacent and connects to Cahoots Canyon, where there is a 200 head resident elk herd. The open space swath is part of a vegetated ravine which connects to the canyon, so the area is rather wildlife-sensitive. Staff and Fish, Wildlife and Parks recommend that wildlife-friendly fencing requirements be included in the covenants. There is the potential for horses or other livestock, so the condition is worded to take that into consideration.

Chairman Carey asked for public comments.

Becky Weaver, PCI, developer's representative, thanked Jackie for her work on this proposal.

Commissioner Curtiss stated that Health Department regulations require paving on hillsides.

Jackie Corday stated that because the road is greater than 500 feet in length and not specifically and uniquely attributable to the subdivision, paving is not required. Also, very little traffic is expected on the road.

There were no further public comments.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(8)(A)(iv) of the Missoula County Subdivision Regulations to not provide internal pedestrian connections; and approve the variance request that requires private streets to have a maximum grade of 8 percent, both based on the findings of fact in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the Langel Addition Subdivision, based on the findings of fact in the staff report and subject to the recommended conditions of approval. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.



**Langel Addition Subdivision Conditions of Approval:****BOOK 004 PAGE 0038****Roads and Utility Easements**

1. The applicant shall contribute to the fund for Miller Creek Road improvements in the amount of \$1,800 per new lot. *Subdivision Regulations Article 4-12 and Public Works recommendation.*
2. A statement shall appear on the face of the plat and be included in the covenants advising lot owners that no permanent structures shall be placed within the Bonneville Power Administration (BPA) power line easements and that any activity within the easements requires a permit from the BPA. The language of the statement shall be reviewed and approved by BPA and the County. *Subdivision Regulations 3-1(2), Bonneville Power Administration and OPG recommendation.*

**Fire**

3. The Langel Addition Development Covenant shall be amended prior to final plat approval by adding the following language: "Each residence must install an address sign at least six inches in height made of a reflective material that is clearly visible from the street." *Subdivision Regulations Article 3-1(1)(B) and Missoula Rural Fire District recommendation.*
4. Prior to final plat approval, the applicant shall petition the property into the Missoula Rural Fire District. *Subdivision Regulations Article 3-1(1)(B) and Missoula Rural Fire District recommendation.*
5. Prior to Zoning Compliance Permit issuance, plans for installation of a residential fire sprinkler system shall be approved by the Missoula Rural Fire District. *Subdivision Regulations Article 3-7(1)(E) and OPG recommendation.*

**Wildlife**

6. The Langel Addition Development Covenant shall be amended prior to final plat approval by adding the following language: "Boundary line fencing is discouraged. Any boundary line fencing must be a wildlife-friendly fence (no barbed wire or chain-link) that is no more than 3.5 feet tall and no lower than 18 inches (at the bottom rail or smooth wire) that will allow passage of wildlife, unless a taller fence is needed for livestock." *Subdivision Regulations Article 3-1(2), 3-1(10) and OPG recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 2:05 p.m.

**THURSDAY, JULY 24, 2003**

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, the Commissioners and Peter Nielsen of Environmental Health met with Commissioners from Sanders and Mineral Counties, area Legislators, and EPA officials regarding Milltown Dam.

Claims List – The Commissioners signed the Claims List, dated July 23, 2003, with a grand total of \$16,129.76. 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. 2003-073 – The Commissioners signed Resolution No. 2003-073, dated July 24, 2003, a Budget Amendment for the Surveyor Department, reflecting expenditure budget authority for expenses related to the GIS Road Inventory Project (\$44,289 in revenues were budgeted, but the related expenses were not). This Amendment adopts this action as part of the Fiscal Year 2003 Budget for Missoula County.

Resolution No. 2003-072 – The Commissioners signed Resolution No. 2003-072, dated July 24, 2003, an Emergency Proclamation stating that Level II Fire Restrictions will be in place on all private land in Missoula County effective 00.01, July 28, 2003, due to extreme fire conditions.

Agreements – The Commissioners signed two (2) Sanitary Sewer Grant Program Agreements for Assistance to Owner-Occupied Households Secured by Real Property, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. The Agreements provide funds for sewer improvements and connection to the City of Missoula municipal sewer system, as follows:

- 1) Agreement for full assistance, dated July 16, 2003, with Barbara J. Compton, 2 Braaten Place; and
- 2) Agreement for full assistance, dated July 18, 2003, with Donna Bockemuehl Sanders, 460 Colorado Avenue.

All sewer development fees and on-site connection costs and fees are as set forth therein.

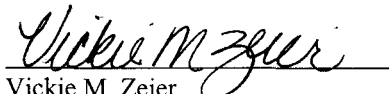
The minutes of the Administrative Meeting are on file in the Commissioners Office.


**FRIDAY, JULY 25, 2003**

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, the Commissioners and Mayor Kadas met with officials from Brooks, Alberta, Canada regarding the beef industry and their upcoming Beef Rally. In the evening, Commissioner Curtiss spoke at Weed Week's "Weed N' Feed Fair" held at Caras Park.

Claims List – The Commissioners signed the Claims List, dated July 24, 2003, with a grand total of \$59,748.40. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated July 25, 2003, with a grand total of \$55,974.92. The Claims List was returned to the Accounting Department.

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

**MONDAY, JULY 28, 2003**

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

Claims Lists – The Commissioners signed three (3) Claims Lists, dated July 24, 2003, with the following grand totals:

- 1) \$131,558.50;
- 2) \$776.57; and
- 3) \$470.34.

The Claims Lists were returned to the Accounting Department.

Monthly Report – Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Michael McMeekin, for the month ending June 30, 2003.

Signature Page – The Commissioners reviewed and signed one (1) Claims Signature Page for the Larchmont Golf Course Accounts Payable Invoice Register dated July 24, 2003, in the amount of \$18,797.02. The Signature Page was returned to the County Auditor.

Plat Adjustment – Per their approval at their July 28, 2003 Planning Status meeting with the Office of Planning and Grants, the Commissioners signed a letter, dated July 31, 2003 to Nick Kaufman, WGM Group, Inc., approving his request for a minor Plat Adjustment (regarding shared driveway maintenance) of Phantom Hills, Phase 3 preliminary plat. They also approved a variance from the Missoula County Subdivision Regulations to not provide boulevard sidewalks along both sides of Tanbark Court.

**TUESDAY, JULY 29, 2003**

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

Claims Lists – The Commissioners signed two (2) Claims Lists, dated July 24, 2003, with the following grand totals:

- 1) \$2,222.55; and
- 2) \$16,907.50.

The Claims Lists were returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated July 28, 2003, with a grand total of \$7,000.00. The Claims List was returned to the Accounting Department.

Replacement Warrant – Chairman Carey examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Missoula Electric Coop as applicant for Accounting Warrant #23353, issued June 3, 2003 on the Missoula County 2110 Fund in the amount of \$245.21 (for electricity), which was not received in the mail. No bond of indemnity is required.

**ADMINISTRATIVE MEETING**

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

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 15 - Pay Date: July 25, 2003. Total Missoula County Payroll: \$867,888.94. The Transmittal Sheet was returned to the Auditor's Office.

Letter – The Commissioners signed a letter, dated July 29, 2003, to Karen and Don Luke, approving their request to waive the lease payment on the batting cages for August 2003, which will allow the batting cages to close for the season. The letter was returned to County Parks Coordinator Lisa Moisey for further handling.

Contract – The Commissioners signed a Professional Services Contract (MDA #03-30-004) between the Missoula County Weed District and the Montana Department of Agriculture, which sets out the arrangements for the Weed District to administer the Noxious Weed Seed Free Forage program. This program furnishes approximately 210 to 220 acres of hay (which involves 10 to 12 producers), the majority of which is used to feed working horses in the back country. All terms and conditions are set forth therein.

Encroachment Permit – The Commissioners signed a Missoula County Encroachment Permit, dated July 29, 2003, permitting George J. and Katherine Shapanus' erected chain link dog kennel to encroach upon a portion of a County right-of-way for Big Flat Road. The permit is effective for a period not to exceed ten (10) years, renewable at the option of Missoula County.

Quitclaim Deed – The Commissioners signed a Quitclaim Deed, dated July 29, 2003 between Missoula County and the Washington Development Company, for release of an easement on the Old County Shops property, recorded at Book 176, Page 1642, Micro Records of Missoula County. The Deed was returned to Deputy County Attorney Michael Sehestedt for further handling.

Resolution No. 2003-074 – The Commissioners signed Resolution No. 2003-074, dated July 29, 2003, a Resolution to annex to the Frenchtown Rural Fire District a parcel of land located in Missoula County (per petition on file in the Missoula County Clerk & Recording, which contains legal descriptions, maps and landowner signatures). A public hearing was held on this matter on July 2, 2003; no protests were received.

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

**WEDNESDAY, JULY 30, 2003**

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

Claims List – The Commissioners signed the Claims List, dated July 24, 2003, with a grand total of \$8,116.32. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated July 25, 2003, with a grand total of \$4,800.31. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed three (3) Claims Lists, dated July 28, 2003, with the following grand totals:

- 1) \$20,626.22;
- 2) \$190,746.50; and
- 3) \$6,619.11.

The Claims Lists were returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated July 29, 2003, with the following grand totals:

- 1) \$900.00; and
- 2) \$19,800.00.

The Claims Lists were returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated July 30, 2003, with a grand total of \$312,133.46. The Claims List was returned to the Accounting Department.

**CHIEF ADMINISTRATIVE OFFICER MEETING**

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

Agreement – The Commissioners signed one (1) Sanitary Sewer Grant Program Agreement for Partial Assistance to Owner-Occupied Households Secured by Real Property, dated July 28<sup>th</sup>, 2003, with Gail P. Betts, 645 Michigan Avenue, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. All sewer development fees and on-site connection costs and fees are as set forth therein.

Other items included:

- 1) The Commissioners approved by motion a request from District Court Special Master Brenda Desmond for a 10% County match (\$5,893.77) to the Juvenile Accountability Block Grant Program (JABG, formerly known as the Juvenile Accountability Incentive Block Grant Program – or JAIBG). These funds are used primarily to support the Youth Court Community Programs.

**PUBLIC MEETING – July 30, 2003**

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

**Pledge of Allegiance**

**Public Comment**

None

**Routine Administrative Actions**

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$393,178.61. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Bid Award: Window and Stair Restoration – Courthouse (Facilities Management) – Postponed from July 23, 2003**

Chairman Carey stated that the bid award for Window and Stair Restoration at the Courthouse had been postponed again to a date not yet determined.

**Hearing (Certificate of Survey): Howes Family Transfer**

Chairman Carey opened the public hearing.

Mike Schestedt presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract A1 of COS 5178, located in Sections 31 and 32, Township 16 North, Range 19 West, Missoula County, Montana.

Alan and Rosemary Howes have submitted a request to create four parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 21.44 acres in size located near Arlee, Montana. The parcel is within the boundaries of the Flathead Indian Reservation and this request was sent to Janet Camel, Planner for the Confederated Salish and Kootenai Tribes, on June 27, 2003. No response has been received.

Alan and Rosemary Howes propose to create four parcels, each approximately four acres in size, for transfer to each of the following children: George B. Herlihy, IV, son; Tedi E. Hodson, daughter; Timothy B. Herlihy, son; and Joe D. Glover, a 14-year-old son. It is proposed that these parcels be used for residential purposes and that the remaining approximately six acre parcel will be used for the previously approved RV Park.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 976 created two parcels over 20 acres	1976	Parcels over 20 acres	Toni and Pauline Gulli	
COS 5178 created a 21 acre remainder and 2 acre mortgage parcel	2001	Security for Construction	Alan and Rosemary Howes	N/A

According to the records kept by the Missoula County Surveyor, the applicant has previously used exemptions to the Subdivision and Platting Act, as listed: Security for a construction mortgage – COS 5178.

This property is located on Highway 93 North, behind the Sheep Ranch Inn and the RV Park.

Alan and Rosemary Howes were present and came forward to answer any questions the Board may have.

Chairman Carey stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. He asked Mr. and Mrs. Howes if they were going to transfer this land to their children.

Alan Howes 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 Alan and Rosemary Howes to create four parcels by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Chairman Carey stated that the Howes would receive a letter of approval within a week or two. All necessary permits and other requirements need to be obtained to build on the land. The approval today is only for the division of land; it does not guarantee access or services, nor does it grant Health Department, zoning or planning approval.

**Consideration: Mountain Drive Estates (2 lots) – on Mountain Drive in Turah**

Liz Mullins, Office of Planning and Grants, presented the staff report.

Michael and Tanya Babbit, represented by Ron Ewart of Eli and Associates, are requesting to subdivide a 2.07 acre parcel into two lots, both 1.04 acres in size. The property is located in Turah approximately one mile northwest of the Interstate 90 interchange. The property is accessed off Mountain Drive. At the end of the cul-de-sac bulb for Mountain Drive, the road easement changes from public to private.

The property is unzoned. It is designated Suburban/Residential which has a recommended maximum density of two dwelling units per acre. The proposed density of the proposal is approximately one dwelling unit per acre, which does not exceed the land use recommendation. The property is relatively flat, with a small portion of slope on the southern portion of the property. A house was recently constructed on proposed Lot 2.

There are three variances being requested. The first is to vary from the 24 foot paved road width requirement for the public portion of Mountain Drive. The Office of Planning and Grants recommends approval of the variance request. Mountain Drive is a 22 foot wide paved public road. Erik Dickson, Public Works Department, supports the road width variance request because a two lot subdivision does not contribute sufficient traffic to warrant an improvement. Curt Belts, Missoula Rural Fire District, commented that access is acceptable.

The second request is to vary from the 24 foot paved road width requirement for the private portion of Mountain Drive. OPG recommends approval of the variance. Mountain Drive is a 20 foot wide gravel private road. Erik Dickson, Public Works Department, supports the road width variance request because a two lot subdivision does not contribute sufficient traffic to warrant an improvement. Curt Belts, Missoula Rural Fire District, commented that access is acceptable, provided there is a 20 foot horizontal clearance for the length of the private drive and that a turnaround is incorporated into one of the driveways, which is a recommended condition of approval.

The third request is to not provide for internal pedestrian connections for the subdivision. OPG recommends approval of the variance request. The property is not located in an area of dense development or high traffic volume. Erik Dickson, Public Works Department, supports the non-motorized variance request given the rural nature of the proposal and the lack of non-motorized facilities in the area.

Conditions of approval include:

1. Proof of legal access across Mountain Acres No. 1, Lot 5.
2. The private road maintenance agreement shall be filed with the final plat.
3. The private road maintenance agreement shall appear on the face of the plat.
4. The developer shall contribute \$100 per new lot to the Missoula Rural Fire District.
5. Driveway plans shall be reviewed and approved by the Missoula Rural Fire District.
6. Noxious weed control language shall be included in the Development Agreement.

Chairman Carey asked for public comments.

Ron Ewart, Eli & Associates, Inc., developer's representative, thanked Liz for her work on this proposal. The applicant has no problems with any of the conditions. The applicants have done some improvements to the road. Power, phone and gas utilities are installed under the road. There was a question regarding legal access and utility easements. He believes there is legal access and the utility easement does exist, although it does not specifically state so on the plat. Many times when these private roads were created with the original COS, they were listed as "60 foot private road." They can easily meet Condition 1.

Commissioner Curtiss stated that even though the area is still fairly rural, when it is considered as a whole, there are quite a few homes. She hoped people would start considering some non-motorized facilities so children don't have walk on the roads, even though it is not being required of these applicants.

Chairman Carey asked what would constitute proof of legal access.

Colleen Dowdall stated that Public Works has asked that the plat indicates the deed exhibit, which is the actual drawing of the easement. Public Works said what needed to be noted on the plat was the deed that granted the access. That should be easy to establish. Typically, a utility company would require an easement to them when the utility is installed. Both the legal access and utility easement questions can be easily satisfied.

There were no further public comments.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(3)(B) of the Missoula County Subdivision Regulations for Mountain Drive to vary from the 24 foot road surface width requirement; approve the variance request from Article 3-2(1)(I) of the Missoula County Subdivision Regulations for the private road serving the subdivision to vary from the 24 foot paved road surface width requirement; and approve the variance request from Article 3-2(8)(A)(iv) of the Missoula County Subdivision Regulations to not provide internal pedestrian connections in the subdivision; all based on the findings of fact set forth in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the Mountain Drive Lots Subdivision, based on the findings of fact set forth in the staff report and subject to the conditions contained in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### **Mountain Drive Lots Subdivision Conditions of Approval:**

##### **Roads**

1. Proof of legal access to the subdivision across Mountain Acres No. 1, Lot 5, shall be provided prior to final plat approval, subject to review by the County Attorney's Office. *Subdivision Regulations Article 3-6, County Attorney's Office and OPG recommendation.*
2. The maintenance agreement contained in the submittal packet shall be filed with the final plat. *Subdivision Regulations Article 3-2(I)(iii) and OPG recommendation.*
3. A private road maintenance agreement shall appear on the face of the plat:

"The purchaser and/or owner of the lot or parcel understands and agrees that private road construction, maintenance and snow removal shall be the obligation of the owner or Property Owners Association and that the County of Missoula is in no way obligated to perform such maintenance or upkeep until the roads are brought up to standards and accepted by the County of Missoula for maintenance. *Subdivision Regulations Article 5-2(4) and OPG recommendation.*

##### **Fire**

4. The developer shall contribute \$100.00 per new lot to the Missoula Rural Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants at the time of final plat approval. *Subdivision Regulations Article 3-7(2) and Missoula Rural Fire District recommendation.*
5. Driveway plans shall be reviewed and approved by the Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-6.*

##### **Noxious Weeds**

6. A Development Agreement shall be filed with the Clerk and Recorder prior to final plat requiring the following: "Lot owners shall maintain their lots in compliance with Montana's County Weed Control Act and the Missoula County Noxious Weed Management Plan. Lot owners shall revegetate all ground disturbances created by maintenance or construction with beneficial species at the first opportunity after maintenance or construction is completed." *Subdivision Regulations Article 3-1(2) and Weed District recommendation.*

**Hearing: Butler Creek Development Park (11 lot Commercial/Industrial) – DeSmet Road**

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Chairman Carey opened the public hearing.

Monte Sipe, Office of Planning and Grants, presented the staff report.

This is a request from George and Dianne Grutsch, represented by David Summerfield of DJ&A, to subdivide a 19.78 acre parcel into 11 lots for light industrial development. The property is located south of Interstate 90 and north of DeSmet Road. Butler Creek Road is located to the east of the proposal.

The property is zoned CI-1 (Light Industrial) and the 1996 Butler Creek Area Comprehensive Plan Amendment designates the property proposed for development as "Light Industrial." The proposed lots range in size from 1.28 acres (Lot 2) to 2.13 acres (Lots 7 and 8).

The topography of the site is relatively flat, with a gentle low swale through the middle of the property. Two creeks, LaValle and Butler, traverse the property in a north/south direction. FEMA designates areas along both of these creeks as "Zone A" floodplain. This designation applies to the 100 year floodplains delineated by approximate methods and identified as un-numbered A Zones on the County of Missoula Flood Insurance Rate Maps.

To determine 100 year flood elevations for this project, DJ&A completed a Hydrology/Hydraulics report for LaValle Creek and Butler Creek. This report indicates that the existing stream banks for both creeks cannot carry the 100 year flood. Instead, the 100 year flood will escape the existing stream banks and flow onto adjacent ground with average depths of approximately 0.5 feet. The FEMA designated, applicants calculated, and proposed new 100 year floodplain boundaries are depicted on the face of the plat.

In order to provide more buildable areas on Lots 9 and 10, the applicant has proposed re-contouring an area along LaValle Creek, beginning 30 feet from the centerline; raising it by 1.5 feet for a 52.5 foot wide berm on each side. The Planning Board expressed concern about the applicants' proposal to reduce the size of the designated floodplain boundary and possible impacts to down stream properties. Staff is recommending a condition that once the new 100 year floodplain boundary is determined, as reviewed and approved by the appropriate agencies, it be delineated on the face of the final plat with reference to the LOMA approval, if necessary.

Butler and LaValle Creeks are bordered by existing riparian vegetation along the east and west sides. The applicant proposes to create a 60 foot wide Riparian Resource Area, 30 feet offset from the centerline of the creek channels, where no improvements will take place. The 60 foot width was suggested by Fish, Wildlife and Parks in their most recent agency letter. If the floodplain modifications are approved, the 52.5 foot wide berm area would provide additional buffering of the riparian areas along LaValle Creek with "no build zones."

Fill materials have been deposited along the west side of LaValle Creek along the rear of Lot 10. Staff is recommending that this fill material be removed and incorporated into the proposed re-contouring work proposed for the new floodplain boundary.

The proposed Riparian Management Plan states that the subdivision will not result in impacts to riparian vegetation. However, installation of culverts could result in removal of riparian vegetation or erosion of soils and other materials into the creek. Culvert installation, sewer and water installation and road construction should be done in a manner that minimizes and mitigates damage to riparian vegetation and include silt fences and other erosion control measures. Staff recommends a condition that a mitigation and restoration plan for these activities in the Riparian Resource Area be submitted prior to commencement of these activities.

An 8 inch gas transmission pipeline traverses through the proposed subdivision. A 30 foot wide natural gas easement is shown on the face of the plat. NorthWestern Energy commented that the easement location could affect construction of buildings and other facilities. Any activity within the easement requires review by NorthWestern Energy. Staff recommends that a section be added to the covenants advising lot owners of the pipeline and include a copy of the "NorthWestern Energy Right-of-Way Provisions" as an attachment to the covenants.

The subject property is located within the Airport Influence Area. Properties located inside the boundaries of this influence area need to meet the requirements outlined in the Airport Influence Area Resolution, which includes completion and approval of an aviation easement prior to any construction. Staff recommends conditions of subdivision approval that the covenants are amended and a note is placed on the plat regarding the location of the subdivision within the Airport Influence Area and that an aviation easement for the subdivision be obtained prior to final plat approval.

Because this proposal is an industrial subdivision, parkland, common area or cash-in-lieu are not required by the Missoula County Subdivision Regulations or State statute. Connection to Mountain Water mainlines and the City of Missoula sewer system are proposed for the subdivision. Fire protection will be provided by fire hydrants connected to Mountain Water mainlines.

Mountain Line commented that the property is close to the Missoula Urban Transportation District boundary and is requesting that the property owners petition into the Missoula Urban Transportation District. Staff is recommending a condition that the subdivider present evidence of petitioning into the Missoula Urban Transportation District prior to final plat approval.

The proposed access to the subdivision is via DeSmet Road, proposed to be renamed Interstate Place and an unnamed road to the west of proposed Lots 10 and 11. Access to Lots 10 and 11 is across a petitioned County road. The road is currently improved to 20-23 feet with a gravel surface within a 60 foot right-of-way. Currently, this road is not maintained and is unnamed. Interstate Place is an improved 18-20 foot wide road with recycled asphalt, within a 60 foot wide public road and utility easement. Missoula County Subdivision Regulations Article 3-2(14)(D) requires a 32-40 foot pavement width within a 60-80 foot wide right-of-way for public roads serving commercial/industrial uses.

The unnamed road and Interstate Place currently do not contain curb and gutter or sidewalks. Missoula County Subdivision Regulations Article 3-2(7) requires curb and gutter on all public streets within and fronting all subdivisions. Subdivision Regulations Article 3-2(8)(A)(i) requires all urban-suburban subdivisions located within the Urban Growth Area to construct concrete boulevard sidewalks on both sides of the street.

Seven variances are being proposed for the project, including varying from the required 32-40 foot surface width for Interstate Place and the unnamed road; the requirement for curb and gutter on Interstate Place and the unnamed road; the requirement for boulevard sidewalks on both sides of Interstate Place and the unnamed road; and a request to allow Lots 4-9 to have a depth greater than three times their average width.

Staff is recommending the following: Denial of the variance request to pavement width for Interstate Place; approval of the variance request to pavement width for the unnamed road; approval of the variance request for curb and gutter on Interstate Place and the unnamed road; approval of the variance request for boulevard sidewalks on Interstate Place with a condition to install a 5 foot boulevard concrete sidewalk on the south side of Interstate Place; approval of the variance request for boulevard sidewalks on the unnamed road; and approval of the variance request for Lots 4-9 to have a lot depth greater than three times their average width.

Planning Board recommended the following: Denial of the variance request for pavement width for Interstate Place; denial of the variance request to pavement width for the unnamed road; denial of the variance request for curb and gutter on Interstate Place and the unnamed road; approval of the variance request for boulevard sidewalks on Interstate Place with a condition to install a 5 foot boulevard concrete sidewalk on the north side; approval of the variance request for boulevard sidewalks on the unnamed road with a condition to install a 5 foot boulevard concrete sidewalk on the east side; and approval of the variance request for Lots 4-9 to have a lot depth greater than three times their average width.

Staff is recommending approval of the Butler Creek Development Park Preliminary Plat with 10 conditions. Planning Board recommended approval with 12 conditions, the 10 conditions as recommended by staff with a modification to Condition 1, and two new conditions. The modification to Condition 1 is to require the boulevard sidewalk on the north side of Interstate Place instead of the south side.

The two new conditions are: 11) the requirement for a 5 foot wide concrete boulevard sidewalk on the east side of the unnamed road; and 12) the requirement to install a landscape buffer along the north property line of Lots 1-7.

Daniel Summerfield, DJ&A, developer's representative, stated that he was representing George and Dianne Grutsch on Butler Creek Development Park. He thanked Monte for his work on the proposal. They are in agreement with the recommended conditions of approval in the staff report. They are not in agreement with some of Planning Board's recommendations on the variance requests. No modifications are being proposed for Butler Creek and its surrounding area with the exception of replacing an existing culvert under the existing road. This will allow passage of a 100 year flood. Currently the culvert is too small to handle a 100 year flood. Any building construction that would occur on Lot 1 would be outside the 100 year floodplain. The lots that are adjacent to LaValle Creek contain a strip of land that is designated as Zone A on the FEMA Floodplain Map. Zone A is described as areas where no base flood elevations have been determined. That basically means that FEMA recognizes the potential for flooding in the area and that more data is needed to define an active floodplain. They have completed that additional work for the applicant. They have done a survey and hydrology study and calculated the boundaries of the 100 year floodplain as it pertains to this property. The site is very flat and the floodplain is very wide but very shallow. The proposal is to complete some minor contouring work along LaValle Creek but not within the designated riparian area. This will provide some protection for Lots 9, 10 and 11 and redefine the floodplain. The re-contouring will be gentle, raising the existing ground approximately 1.5 feet within a 50 foot area. The purpose of the work would be to contain minor sheet flooding that could occur during a 100 year flood event. The goal is to work with the Missoula County Floodplain Administrator to redefine the floodplain on the property and provide more buildable lots adjacent to the creek. They will work with the Floodplain Administrator to obtain the appropriate permits necessary. Even if the work is not permitted, there are still valid building sites on each lot. The site on Lot 10 would be small, but it would still be buildable. They were requesting a variance to the street width requirement for Interstate Place, however, the owner feels that the 32 foot width is acceptable. They also requested a variance from the same requirement for the unnamed road. Staff recommended approval and Planning Board recommended denial. They feel a 24 foot pavement width is more than adequate. This portion of the road serves two existing lots and one proposed lot. It is basically a driveway. The chances of the road being extended or used for other purposes are minimal. If other properties adjacent to the road or to the west were to develop, it would more appropriate to extend Expressway to access those lots. The road is an extension of the existing DeSmet Road, which is a 24 foot wide paved road. Variance Requests 3 and 4 are to vary from the requirement to install curb and gutter along Interstate Place and the unnamed road. Curb and gutter are not needed for drainage control. Public Works is in support of these variance requests but Planning Board recommended denial. A workable drainage plan has been proposed without the use of curb and gutter. The closest curb and gutter to this proposal is approximately 1.4 miles away on Expressway. The applicant does not understand how they could be required to install curb and gutter when it is not in character with the surrounding area. They are in agreement with Planning Board's recommendation for Variance Request 5, approval of the variance for boulevard sidewalks on both sides Interstate Place with a condition for a 5 foot boulevard sidewalk be installed on the north side of the street. They also requested a variance to installing boulevard sidewalks on both sides of the unnamed road. They are not in agreement with the Planning Board's recommendation to install a 5 foot concrete boulevard sidewalk on the east side of the unnamed road. Again, it is a dead-end street that serves three businesses and the chance of pedestrian traffic is small. A sidewalk on this street would not be needed for years. The area is not a destination for pedestrians. There are in agreement with the recommendation from both staff and the Planning Board for Variance Request 7. There is a statement on the plat that the owners are waiving the right to protest an RSID/SID should any of these improvements be required in the future. If the variance requests are accepted per Planning Board's recommendation, it will create an island which none of the adjacent properties comply with.

Commissioner Curtiss stated that Planning Board recommended a new condition to install a landscape buffer along the freeway. She asked how the applicant felt about that recommendation.

Daniel Summerfield stated that the applicant did not agree with the recommendation, but it is a minor point to argue about.



Commissioner Curtiss asked if covenants would allow outside storage of equipment.

Daniel Summerfield stated that the existing zoning allows outside storage. It would depend on what kind of businesses occupied each site and whether they would utilize outside storage.

Chairman Carey asked if the applicant was in agreement with Planning Board's recommendation to install sidewalks on the north side of Interstate Place.

Daniel Summerfield stated the applicant was in agreement with that recommendation.

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

Commissioner Curtiss asked if sidewalks were being required in the Johnson Brothers development across the street.

Monte Sipe stated there were particular conditions addressing walkway, but they were somewhat confusing from the 1996 recommendation for approval. It talked a lot about easements and where they were to be located, but it doesn't specifically address actual improvements to walkways and was further confused by the fact that some of the road names have changed from what was proposed at preliminary plat approval. In the staff report, particular to DeSmet, there was a variance granted to road width. There was not a variance request for curb and gutter or sidewalks. In the findings, it addressed walkway improvements which were satisfied through the waiver of right to protest. With this project, staff is requiring the applicant to initiate that RSID process to do those improvements which would follow with the waiver from the Johnson Brothers property. There are not currently sidewalks on Expressway or DeSmet.

Commissioner Curtiss asked if initiating the RSID process for paving would also cover sidewalks.

Monte Sipe stated that as recommended by Planning Board and agreed to by the applicant, it would include a concrete boulevard sidewalk, 5 foot wide, on the north side of DeSmet.

Commissioner Curtiss asked if through the RSID process, the Johnson Brothers property would be required to install sidewalks on their side.

Greg Robertson stated that the subdivision conditions would have to be looked at again. As he recalled, there is a waiver of right to protest. There is a sidewalk all the way up to Butler Creek on both sides along Expressway, so it would be an extension to tie into what exists. It was intentionally excluded from the original RSID that extended Expressway because the landowners could not come to agreement to pay the costs at that time.

Commissioner Curtiss stated that her concern was that this applicant did not bear the cost of installing sidewalks on the Johnson Brothers property.

Greg Robertson stated it would be separated out in how the district was established. It is not up to the Grutschs to pay for that improvement.

Chairman Carey stated that Planning Board had recommended a sidewalk on the east side of the unnamed road. He asked where it ended.

Greg Robertson stated the petitioned road stops at the northerly boundary of the subdivision on the west side, then it turns private and goes back into the Johnson Brothers pit. It would essentially serve only one or two lots of this subdivision.

Monte Sipe stated it would be about a 400-500 foot extension that would dead end at the northwest corner of the property.

Chairman Carey stated that when he visited the property, one thing he noticed was the amount of big truck traffic in the area. He questioned if the road widths were adequate to handle the traffic.

Greg Robertson stated that the existing DeSmet Road is not capable of handling truck traffic, it is only 18 feet wide. The 32 foot width with appropriate improvement will accommodate trucks safely. The segment that exists on DeSmet Road south of Expressway that goes to the concrete plant needs to be looked at, the large trucks have been hard on the road surface.

Commissioner Evans stated that the people that use the road and need a wider surface are beyond this subdivision. She would have a problem requiring this applicant to widen the road for the benefit of others. If the road needs to be widened to accommodate trucks from Mayflower and the cement plant, they should pay for the improvements, not this applicant.

Greg Robertson stated he did not have an objection to the reduced pavement width along the short stretch of the unnamed road. There is property to the west that has yet to develop and has the potential for significant impacts depending on the use. The road widening would need to be revisited at the time that property develops.

Commissioner Evans stated that she did not have a problem with an RSID waiver, but the Grutschs should not have to pay for the widening alone.

Commissioner Curtiss stated that the Johnson Brothers have already waived the right to protest an RSID. She asked who else has waived their right.

Greg Robertson stated the MRL owned the cement plant and was leasing the space.

Commissioner Curtiss stated that this proposal would be sharing the cost with the Johnson Brothers.

Greg Robertson stated that was correct.

Monte Sipe stated it would be just the northern extension.

Commissioner Evans asked if the County owned land in the area.

Greg Robertson stated he believed all of the County land had been sold. The unnamed road will be paved to 24 feet.

Commissioner Curtiss stated that the road will be paved to 24 feet. If it needs to be widened in the future, the applicant has waived the right to protest an RSID for such improvements.

Greg Robertson stated that was correct.

Commissioner Evans moved that the Board of County Commissioners approved all seven variance requests. There being no second, the motion failed.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(3) of the Missoula County Subdivision Regulations requiring a pavement width of 32-44 feet for Interstate Place. There being no second, the motion failed.

Commissioner Curtiss moved that the Board of County Commissioners deny the variance request from Article 3-2(3) of the Missoula County Subdivision Regulations requiring a pavement width of 32-44 feet for Interstate Place, based on the findings of fact contained in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-1 (Commissioner Evans opposed).

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(3) of the Missoula County Subdivision Regulations requiring a pavement width of 32-44 feet for the unnamed road, based on the findings of fact contained in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(7) of the Missoula County Subdivision Regulations requiring curb and gutter on Interstate Place, based on the findings of fact contained in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(7) of the Missoula County Subdivision Regulations requiring curb and gutter on the unnamed road, based on the findings of fact contained in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(8)(A)(i) of the Missoula County Subdivision Regulations to not provide concrete boulevard sidewalks on both sides of the street on Interstate Place, based on the findings of fact and recommended amended condition stated in the Planning Board minutes. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(8)(A)(i) of the Missoula County Subdivision Regulations to not provide concrete boulevard sidewalks on the unnamed road, based on the findings of fact contained in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-3(1)(e) of the Missoula County Subdivision Regulations to allow Lots 4-9 to have a depth greater than three times their average width, based on the findings of fact contained in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Colleen Dowdall stated that the Board could make a motion to approve the subdivision, subject to whatever conditions the Board may want; Conditions 1-10, then accepting or rejecting Conditions 11 and 12 as recommended by Planning Board. Amendments could be made to that motion to modify conditions. The Board is considering the recommendation of Planning Board at this time.

Commissioner Curtiss moved that the Board of County Commissioners approved the Butler Creek Development Park Subdivision, based on the findings of fact in the staff report and subject to Conditions 1-10 with Condition 1 as modified by Planning Board to install a 5 foot boulevard concrete sidewalk on the north side of Interstate Place. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Chairman Carey stated that although Condition 12 was not accepted, he did feel that a landscape buffer would be a good thing.

Commissioner Curtiss stated she agreed that it would be a good idea but it is not something that they could legally require of this applicant. It is not in the regulations to require landscaping along the highway. She hoped the developer would agree it would be a good thing and consider installing some landscape buffering.

#### **Butler Creek Development Park Subdivision Conditions of Approval:**

##### **Roads/Drainage/Walkways**

1. The applicant shall initiate an RSID for the construction of improvements to Interstate Place adjacent to the subdivision. Improvements shall include, at a minimum, a 32 foot wide paved road with 2 foot gravel shoulders centered on the existing 60 foot public road easement with a 5 foot boulevard concrete sidewalk on the north side, subject to review and approval of County Public Works, prior to final plat approval. *Subdivision Regulations Article 3-2(14)(C), Public Works, OPG and Planning Board recommendation.*

2. The plat shall include an RSID/SID waiver for improvements to the County roads that abut the south and west boundaries of the subdivision. *Subdivision Regulations Article 3-2(3)(E).*

#### **Transportation**

3. The subdivider shall present evidence of petitioning into the Missoula Urban Transportation District (MUTD), prior to final plat approval. *Subdivision Regulations Article 3-2 and MUTD recommendation.*

#### **Riparian Area**

4. The existing fill material on proposed Lot 10 located within the designated Riparian Area shall be removed in conjunction with the re-contouring work proposed for the new floodplain boundary. *Subdivision Regulations Article 3-13 and Long Range Planning recommendation.*
5. A Riparian Area Management Plan addressing planned mitigation of impacts from floodplain, road and infrastructure improvements and restoration of the areas with native species shall be submitted for review and approval by OPG and County Public Works, prior to commencement of any construction within the designated Riparian Areas. *Subdivision Regulations Article 3-13.*

#### **Health and Safety**

6. An avigation easement shall be obtained for the property in compliance with the Airport Influence Area Resolution prior to final plat approval. *Subdivision Regulations Article 3-1(2) and Airport Authority request.*
7. A statement shall appear in the covenants and on the face of the plat regarding the location of the subdivision within the Airport Influence Area and the associated noise levels and soundproofing measures to reduce noise levels. The language of the statement shall be subject to review and approval of the Airport Authority prior to final plat approval. *Subdivision Regulations Article 3-1(2), 4-1(12) and Airport Authority request.*
8. The covenants shall include a section advising lot owners of the high pressure natural gas transmission pipeline and a copy of the "NorthWestern Energy Right-of-Way Development Provisions" shall be included as an attachment to the covenants, subject to OPG review and approval prior to final plat approval. *Subdivision Regulations Article 3-1(2) and OPG recommendation.*
9. The new approved floodplain designations for LaValle Creek and Butler Creek shall be delineated and labeled as "no build zones" on the face of the final plat. If required, a Letter of Map Amendment (LOMA) approving of the newly designated floodplain boundaries shall be submitted and reference noted on the face of the final plat. This condition is subject to review by OPG and the Missoula County Floodplain Administrator prior to final plat approval. *Subdivision Regulations Article 3-1 and Floodplain Administrator recommendation.*

#### **Weeds**

10. A Revegetation Plan for disturbed sites shall be reviewed and approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Weed Board recommendation.*

#### **Other Business**

Geoff Bayliss stated this project is close to his warehouse, Blair Transfer at 7600 DeSmet Road. There has been some discussion about putting Expressway through there. His concern is that there still be plenty of access for the semi trucks.

Commissioner Evans stated that they had discussed the fact that if wider widths are needed to handle large trucks then an RSID process needs to be initiated so the everyone who needs the wider width pays their appropriate share of the improvements.

Geoff Bayliss stated the roads are wide enough now.

Commissioner Evans stated that there have been discussions about taking Expressway, at some time in the future, clear through across to the highway. That could be 10 years in the future, or perhaps never, but the idea has been discussed.

Geoff Bayliss stated that he just wanted to make sure that he didn't get lost in the dust.

Commissioner Curtiss stated that the Board recognizes the need for more roads in the area because there are businesses that need good access for large trucks.

There being no further business to come before the Board, the Commissioners were in recess at 2:25 p.m.

#### **FISCAL YEAR 2004 BUDGET HEARING**

##### **PRELIMINARY HEARING**

**WEDNESDAY, JULY 30, 2003 – 2:30 P.M.**

**ROOM 201 – COURTHOUSE ANNEX**

The Preliminary Hearing on the Fiscal Year 2004 Budget was opened at 2:40 p.m. by Chairman Bill Carey. Also present were Commissioner Jean Curtiss, Commissioner Barbara Evans, Chief Financial Officer Dale Bickell, County Public Works Director Greg Robertson and Chief Administrative Officer Ann Mary Dussault.

Dale Bickell presented a general overview of the financial condition of the County. A handout with budget information for Fiscal Year 2004 was available.

**FINANCIAL CONDITION*****Fiscal Year 2003 Financial Highlights***

Clerk and Recorder – Department revenues totaled approximately \$1,180,000, nearly \$410,000 over what was anticipated. This was due to the strong real estate market and low interest rates.

Library - \$232,000 was spent on the remodeling project. The Fiscal Year 2004 budget includes \$206,500 for continued remodeling.

Development Park – Land sales totaled approximately \$2,116,000 in Fiscal Year 2003.

Health Insurance Trust – After two consecutive years of declining investments, the Trust appears to have stabilized with a net decline totaling approximately \$104,000 (compared to \$900,000 in Fiscal Year 2002). Insurance premiums are expected to increase 14% in Fiscal Year 2004 to ensure the sustainability of the Trust.

Partnership Health Center – PHC's financial crisis ended in December, 2002, and the new management team has instituted a number of changes to ensure the Clinic's sustainability. PHC's accumulated deficit, totaling approximately \$600,000, will be paid back to the County over the next several years.

Animal Control – The new facility was substantially completed during the year. Fiscal Year 2003 construction expenditures totaled \$517,000.

Office of Planning and Grants – The East Missoula Sewer Project was substantially completed at a Fiscal Year 2003 cost of \$3,011,000.

Sheriff/Law Enforcement – Two grants totaling \$819,000 were used to purchase a bomb disposal robot and a "Total Containment System" trailer and to upgrade communication towers to expand communication capacity to outlying counties.

Sheriff/Detention – Higher than projected revenues, due primarily to revenue producing beds and effective cost controls, resulted in a budgetary savings of approximately \$400,000.

Public Works – The department has substantially completed or started on some significant projects, including:

- Boy Scout Bridge in Seeley Lake has been re-decked
- Maclay Flats Bridge is in the process of being re-decked with other structural improvements
- Currently in design stage for the re-decking and other structural improvements for the Van Buren Street Walking Bridge
- Substantially completed construction of the Goodan Keil Loop connection at the I-90 Interchange to the Development Park
- Completed construction of the Lolo pedestrian trail
- Completed construction of the Clements/North Avenue pedestrian trail
- Completed construction of the Frenchtown pedestrian trail
- Participated in Deschamps Lane reconstruction
- Completed milling projects at Potomac
- Completed McNamara Road slope stabilization project
- Purchased approximately \$500,000 worth of new equipment for fleet enhancements
- Beeler Road in the Huson area is in the process of being constructed

Capital Improvements – Fiscal Year 2003 projects included:

- Phase II of the Old Courthouse Renovation (cleaning and repairing of the terra cotta and granite). \$41,000 has been spent out of a \$209,000 project.
- Old Courthouse Fire Safety Improvements (\$66,715)
- 4th Floor Demolition (\$49,068)
- Remove Annex "Bowties" (\$40,616)

**SIGNIFICANT CHANGES****Transfer of Indigent Legal Defense Costs**

- Effective July 1, 2004, most expenses related to indigent defense become the responsibility of the State. Our projections show potential savings in the Public Defenders Office and the Clerk of Court totaling \$547,000.

**Internal Services**

- Effective July 1, 2004, the County established the Telephone Services Fund that is responsible for maintaining the City/County phone system. These operations were previously accounted for in the General Fund. Revenues are generated through monthly phone billings to all users.
- During Fiscal Year 2003, the County established the Excess Loss Fund, which acts as a secondary layer of self-insurance for the County's three self-insurance funds (employee benefits, workers compensation, property and liability). The fund was created to lower the re-insurance requirements of the other self-insurance funds, thus decreasing the re-insurance premiums. Revenues are generated through premiums charged the other self-insurance funds.

**BUDGET PARAMETERS**

Cash Reserves – General Fund reserves set at 12% of total revenues, up from 10% in Fiscal Year 2003.

Salary Increase – The Commissioners have established a base salary increase of 3% for Fiscal Year 2004.

Capital Projects

- Courthouse/Annex Remodeling and Repair - \$500,000 set aside for the planned remodel of the Courthouse, particularly the vacant 4th floor. \$500,000 was set aside in Fiscal Year 2003 and an additional \$500,000 is planned for Fiscal Year 2005. The total project is expected to be \$1.4 million and is scheduled for completion in Fiscal Year 2005.
- Replacement of the County's Microwave Communications "Backbone" - \$350,000 set aside for replacement and upgrade of the current backbone. Total cost is expected to be \$650,000 over the next few years. \$150,000 was set aside in Fiscal Year 2003.

**BUDGET ENHANCEMENTS***Enhancements Tentatively Approved*

- Treasurer – Purchase on-line tax payment module (\$2,559)
- Financial Administration – Reserve additional monies as a contingency for the Fiscal Year 2004 NorthWestern Energy property tax billing (\$328,229)
- Facilities Management – Expected increase in utilities costs (\$71,535); add 1 FTE apprentice position (\$28,000)
- Human Resources – Add 1 FTE Administrative Secretary (\$34,374)
- Parks - \$25,000 General Fund participation in Fort Missoula restroom project (\$125,000)
- Office of Planning and Grants – Add 0.5 FTE Case Planner (\$21,532); add 1 FTE Regulatory Reform Planner (\$43,139)
- Specialized Transportation – Designate \$25,750 annually to special transportation needs
- Sheriff/Law Enforcement – Increase in base to compensate for increased operating costs (\$144,832)
- Sheriff/Detention – State detention contract contingency (\$309,632); increase in Missoula Correctional Services Contracts (\$48,408); increase in base to compensate for increased operating costs (\$31,449)

*Enhancements Given Preliminary Approval*

- Art Museum - \$25,000 General Fund participation in the capital campaign
- Clerk of Court – Add 0.5 FTE District Court Clerk (\$15,289)
- Public Defender – Add 1 FTE Attorney (\$49,402 [local cost = \$6,175]); reserve an additional \$100,000 District Court assumption contingency
- County Attorney – Add 1 FTE Attorney (\$50,225)
- Poor Fund – Add \$54,022 to tax base to fund Community Based Organizations at recommended level

*Capital Improvement Program*

- Repair Exterior of Public Defenders and Youth Court Buildings (\$68,000)
- Old Courthouse Renovation – Cleaning and repairing terra cotta and granite (\$168,000); repair granite base of main entrance (\$98,835); refinish wood windows (\$94,600)
- 4th Floor Annex Renovation (\$950,000)
- Replace Courthouse Boilers (\$343,150)
- Replace Bleachers at the Fair (\$41,083)
- Install Electro-Flow Units (\$24,000)

*Technology Fund*

- Elections system as required by Federal law (\$660,710 to be financed over 5 years)
- Criminal Justice System (\$450,000 cost, \$400,000 in grant revenue available)
- Extend fiber-optic lines to the Road Department (\$75,000)

**BUDGET PRIORITIES***Pending Decisions*

- Surveyor/GIS – Request for \$24,100 to offset a decrease in departmental revenues
- Health Insurance – Consider the use of statutorily allowable levy authority for the increase in health insurance costs (\$354,714)
- Judgment Levy – Consider levying one-time statutorily allowable cost of \$125,000 to pay for District Court judgment regarding Schram Bridge

Certified taxable valuation from the Department of Revenue is expected in early August

**BOTTOM LINE**

The Fiscal Year 2004 budget as presented, including the enhancements that have been preliminarily approved by the Board of County Commissioners, could result in a net tax decrease totaling \$70,000 or 0.45 mills. Final results depend largely on the certified taxable value and the amount of newly taxable property in the County. We caution everyone to remember that enhancement approvals are NOT final and are contingent on final budget adoption.

Ann Mary Dussault stated that this hearing is the first of three hearings on the budget. The preliminary hearing continues this evening at 7:00 p.m. The final budget hearing will be Wednesday, August 20, 2003, after the

Commissioners regular Wednesday Public Meeting, at approximately 3:00 p.m. The proposed date to adopt the budget is at the regular Wednesday Public Meeting on August 27, 2003, beginning at 1:30 p.m.

Chairman Carey opened the public hearing. The following people spoke in support of:

Speaker's Name	In Support of
Joe Bishoff	Poverello Center
Henry Graciani	Salvation Army
Fran Albrecht	Watson Children's Shelter
Kelly Rosenleaf	Child Care Resources
Steve Earle	Specialized Transportation
Mike Mayer	Specialized Transportation
Chris Clasby	Specialized Transportation, Underage Meals on Wheels
Mary Reopelle	Specialized Transportation
Verna Louellen	Specialized Transportation
Virginia Noyes	Specialized Transportation
Marcia Houke	Specialized Transportation
Bonnie Buckingham	Missoula Food Bank
Susan Kohler	Aging Services, Meal Services, Specialized Transportation
Kathy Flynn	Underage Meals on Wheels
Eileen Samson	Underage Meals on Wheels
Jennifer Ewan	Underage Meals on Wheels
Kate Jerrim-Ybarra	Supplemental Security Income Transition Program – Human Resource Council; Interim Assistance Reimbursement
Christine Gough	Family Basics – WORD

There were no further public comments.

Dale Bickell thanked the new County Auditor Barbara Berens for her work during the budget process.

Chairman Carey thanked everyone for coming to the meeting and for their commitment to social services in Missoula.

There being no further business to come before the Board, the Commissioners were in recess at 3:30 p.m. The preliminary budget hearing will reconvene at 7:00 p.m. this evening.

#### **FISCAL YEAR 2004 BUDGET HEARING**

##### **PRELIMINARY HEARING**

**WEDNESDAY, JULY 30, 2003 – 2:30 P.M.**

**ROOM 201 – COURTHOUSE ANNEX**

The Preliminary Hearing on the Fiscal Year 2004 Budget was opened at 2:40 p.m. by Chairman Bill Carey. Also present were Commissioner Jean Curtiss, Commissioner Barbara Evans, Chief Financial Officer Dale Bickell, County Public Works Director Greg Robertson and Chief Administrative Officer Ann Mary Dussault.

Dale Bickell presented a general overview of the financial condition of the County. A handout with budget information for Fiscal Year 2004 was available.

#### **FINANCIAL CONDITION**

##### ***Fiscal Year 2003 Financial Highlights***

Clerk and Recorder – Department revenues totaled approximately \$1,180,000, nearly \$410,000 over what was anticipated. This was due to the strong real estate market and low interest rates.

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#### SIGNIFICANT CHANGES

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#### ***Technology Fund***

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- Extend fiber-optic lines to the Road Department (\$75,000)

#### **BUDGET PRIORITIES**

##### ***Pending Decisions***

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#### **BOTTOM LINE**

The Fiscal Year 2004 budget as presented, including the enhancements that have been preliminarily approved by the Board of County Commissioners, could result in a net tax decrease totaling \$70,000 or 0.45 mills. Final results depend largely on the certified taxable value and the amount of newly taxable property in the County. We caution everyone to remember that enhancement approvals are NOT final and are contingent on final budget adoption.

Ann Mary Dussault stated that this hearing is the first of three hearings on the budget. The preliminary hearing continues this evening at 7:00 p.m. The final budget hearing will be Wednesday, August 20, 2003, after the Commissioners regular Wednesday Public Meeting, at approximately 3:00 p.m. The proposed date to adopt the budget is at the regular Wednesday Public Meeting on August 27, 2003, beginning at 1:30 p.m.

Chairman Carey opened the public hearing. The following people spoke in support of:

Speaker's Name	In Support of
Joe Bishoff	Poverello Center
Henry Graciani	Salvation Army
Fran Albrecht	Watson Children's Shelter
Kelly Rosenleaf	Child Care Resources
Steve Earle	Specialized Transportation
Mike Mayer	Specialized Transportation
Chris Clasby	Specialized Transportation, Underage Meals on Wheels
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Marcia Houke	Specialized Transportation
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Jennifer Ewan	Underage Meals on Wheels
Kate Jerrim-Ybarra	Supplemental Security Income Transition Program – Human Resource Council; Interim Assistance Reimbursement
Christine Gough	Family Basics – WORD

There were no further public comments.

Dale Bickell thanked the new County Auditor Barbara Berens for her work during the budget process.

Chairman Carey thanked everyone for coming to the meeting and for their commitment to social services in Missoula.

There being no further business to come before the Board, the Commissioners were in recess at 3:30 p.m. The preliminary budget hearing will reconvene at 7:00 p.m. this evening.

#### **FISCAL YEAR 2004 BUDGET HEARING**

#### **CONTINUATION OF PRELIMINARY HEARING**

**WEDNESDAY, JULY 30, 2003 – 7:00 P.M.**

**ROOM 201 – COURTHOUSE ANNEX**

The Preliminary Hearing on the Fiscal Year 2004 Budget was reconvened at 7:00 p.m. by Chairman Bill Carey. Also present were Commissioner Jean Curtiss, Commissioner Barbara Evans, Chief Financial Officer Dale Bickell and Chief Administrative Officer Ann Mary Dussault.

The following people spoke in support of:

<b>Speaker's Name</b>	<b>In Support of:</b>
Kelly Slattery-Robinson	YWCA Battered Women and Children Shelter; First Step; Single Women Program
Teresa Cowan	Parenting Place

There were no further public comments.

Chairman Carey stated that the final hearing on the Fiscal Year 2004 budget will be held on Wednesday, August 20, 2003, at approximately 3:00 p.m. in Room 201 of the Courthouse Annex. Written comments could be submitted any time. Adoption of the budget is scheduled for Wednesday, August 27, 2003, during the Commissioners regularly scheduled Public Meeting, at 1:30 p.m. in Room 201 of the Courthouse Annex.

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

#### **THURSDAY, JULY 31, 2003**

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

Claims List – The Commissioners signed the Claims List, dated July 28, 2003, with a grand total of \$79,994.53. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated July 30, 2003, with the following grand totals:

- 1) \$960.96; and
- 2) \$3,259.26.

The Claims Lists were returned to the Accounting Department.

#### **ADMINISTRATIVE MEETING**

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

Other items included:

- 1) A discussion was held regarding a proposed Land Easement Agreement so Verizon Wireless could put a cellular tower on the Fairgrounds property. The Commissioners made and passed a motion that their first choice would be a combined use in the grandstand area (the tower could also be used for lighting purposes); their second choice would be to place the tower near the horse barns. Fair Director Scot Meader will convey these ideas to the Fair Board.
- 2) The Commissioners approved the appointments of Bill Shoup and Don Erickson to the Swan Valley Fire Service Area Board of Trustees. Confirmation letters will follow.
- 3) The Commissioners reviewed and approved a request from the Lolo Community Council to waive an invoice in the amount of \$968.67 for the May 6, 2003 Election, per prior agreement
- 4) The Commissioners assessed and approved the review of the Clerk of the District Court as of December 2002, which include comments and recommendations, as well as a response from the Clerk of Court. The document was forwarded to the Clerk & Recorder for filing.
- 5) A discussion was held with Emergency Services Director Jane Ellis regarding current fire staffing/closures issues. Missoula County is presently in a Stage 2 air alert.

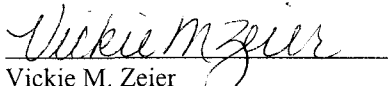
The minutes of the Administrative Meeting are on file in the Commissioners Office.

## FRIDAY, AUGUST 1, 2003

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

Plat – The Commissioners signed the Plat for Deer Creek Tracts, a five-lot minor subdivision located in the SW¼ of Section 17, and the NW¼ of Section 20, T 17 N, R 15 W, PMM, Missoula County, a total area of 30.44 acres, with the owners of record being Richard C. Lewis and John A. Bell.

Monthly Report – Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending July 31, 2003.

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

## MONDAY, AUGUST 4, 2003

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was on vacation the week of August 4<sup>th</sup> through the 8<sup>th</sup>.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated August 1, 2003, with a grand total of \$78,760.00. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtiss signed two (2) Claims Lists, dated August 4, 2003, with the following grand totals:

- 1) \$15,647.66; and
- 2) \$80,004.51.

The Claims Lists were returned to the Accounting Department.

Monthly Report – Chairman Carey examined, approved and ordered filed a corrected Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending June 30, 2003.

Shoreline Permit – Per the recommendation of the Office of Planning and Grants, the Commissioners approved and Chairman Carey signed an application by Richard B. Allen to install an extension to an existing boat dock on Lake Inez. The property is described as Tract 1 in the N½ of COS #5067. The document was returned Roy Fyffe in the Office of Planning and Grants for further signatures and handling.

## TUESDAY, AUGUST 5, 2003

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

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated August 5, 2003, with a grand total of \$43,801.77. 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, Shirley E. Faust, for the month ending July 31, 2003.

ADMINISTRATIVE MEETING

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

Request for Action – The Commissioners signed a letter, dated July 29, 2003, to the ELOA Grant Review Committee, Department of Health and Human Services, Washington, DC, designating the Health Start Council ("Council") of Missoula as the eligible Local Council for Missoula County for the purpose of applying for a discretionary grant under the Early Learning Opportunities Act ("ELOA") Program. The letter also authorizes the Council to develop and submit a grant application to the Administration on Children, Youth and Families, Child Care Bureau, and to administer the implementation of the project, if funded. The letter was returned to Peggy Seel in the Office of Planning and Grants for further handling.

Resolution No. 2003-080 – The Commissioners signed Resolution No. 2003-080, dated August 5, 2003, a Resolution which adopts the compensation schedule for Missoula County elected officials for Fiscal Year 2004. The document was forwarded to Margaret Sample for her signature and return.

Request for Action – The Commissioners signed submittal documents for the Department of Health and Human Services' continuation grant for the Missoula County Domestic Violence Program, for which we have received funding since FY '82. This is the YWCA domestic violence grant for shelter, crisis intervention, advocacy, counseling, and support and prevention services to victims of domestic and sexual violence. The grant is for \$55,000, which is matched by the \$18,000 County CBO grant for the Jesuit Volunteers who provide 1.5 FTE staffing in the YWCA Shelter. The documents were returned to Leslie McClintock in the Office of Planning and Grants for further signatures and handling.

Notice of Hearing – Chairman Carey signed a Notice of Hearing, dated August 5, 2003, in regards to establishing a compression brake prohibition zone on Miller Creek Road. If adopted, signage will be installed along Miller Creek

Road declaring that compression brakes are prohibited. A public hearing will be held on Wednesday, August 27, 2003 at 1:30 p.m. in Room 201 of the Missoula County Courthouse Annex.

Request for Action – The Commissioners signed an ongoing Work Experience Site Agreement between Missoula County and the Missoula Job Service, which provides specific worksites for people who receive public assistance, leading to the development of basic work habits related to training provided to improve skills, exploration of various occupational fields, and gaining knowledge of the “world of work”. The effective date is July 1, 2003. The document was returned to Marie Pruitt in Human Resources for further handling.

Request for Action – Chairman Carey signed a Standard Audit Contract with Elmore & Associates for Fiscal Year 2003. The total fee for the audit is \$77,900. The document was forwarded to the Local Government Services Bureau in Helena for further signatures.

Contract – The Commissioners signed a Professional Services Contract between Missoula County and the Collaboration Institute for the purpose of facilitating managers and staff in the Environmental Health Department in improving their work environment. The total amount shall not exceed \$9,000.00 (plus up to \$1,500 reimbursement for mileage between Helena and Missoula and for hotel reimbursement). The term will be July 24, 2003 through June 30, 2004. The document was returned to the Health Department for further handling.

Contract – The Commissioners signed an on-going Professional Services Contract between Missoula County and Pruyn's Veterinary Hospital for the provision of trauma/medical therapy for injured/sick animals; euthanasia services for unclaimed animals; and specialized training for the Animal Control Staff on a request basis. All fees are set forth therein. The term will be July 1, 2003 through June 31, 2004. The document was returned to the Health Department for further handling.

Contracts – The Commissioners signed four (4) Professional Services Contracts between Missoula County and the following contractors for services related to the Western Montana Fair (“WMF”), as follows:

- 1) With Agnes Johnson (Missoula, MT), Co-Assistant Barn Manager for WMF Horse Racing. The total compensation shall not exceed \$600; the term is July 28 through August 10, 2003;
- 2) With Joy Billingsley (Florence, MT), Co-Assistant Barn Manager for WMF Horse Racing. The total compensation shall not exceed \$600; the term is July 28 through August 10, 2003;
- 3) With Karen L. Miller (Missoula, MT), Barn Manager for WMF Horse Racing. The total compensation shall not exceed \$900; the term is July 28 through August 10, 2003; and
- 4) With Dave Phillips (Busby, MT), Starter for WMF Horse Racing. The total compensation shall not exceed \$1,700; the term is August 5 through August 10, 2003.

Request for Action – Chairman Carey signed a contract, dated July 14, 2003 between Missoula County and Paradigm Architects (“PA”) for the Ice Rink retrofit and Additions at the Missoula County Fairgrounds Architectural Services. Compensation and other terms are set forth therein. The document was returned to Bidding Officer Doreen Culver for further handling.

Signature Page – The Commissioners reviewed and signed one (1) Claims Signature Page for the Larchmont Golf Course Accounts Payable Invoice Register dated August 1, 2003, in the amount of \$29,121.90. The Signature Page was returned to the County Auditor.

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

**WEDNESDAY, AUGUST 6, 2003**

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

Claims Lists – Commissioners Carey and Curtiss signed three (3) Claims Lists, dated August 4, 2003, with the following grand totals:

- 1) \$29,972.43;
- 2) \$2,867.94; and
- 3) \$7,371.44.

The Claims Lists were returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtiss signed four (4) Claims Lists, dated August 5, 2003, with the following grand totals:

- 1) \$13,800.00;
- 2) \$29,300.00;
- 3) \$14,394.52; and
- 4) \$18,171.80.

The Claims Lists were returned to the Accounting Department.

Indemnity Bond – Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Carolina Biological Supply Company, Charlotte, North Carolina, as Principal for Missoula County Public Schools Warrant #84958, issued March 12, 2003 on the Missoula County High School and Elementary General Fund in the amount of \$920.51 (for biological supplies), which cannot be found.

Monthly Report – Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending July 31, 2003.

CHIEF ADMINISTRATIVE OFFICER MEETING

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

Resolution No. 2003-076 – The Commissioners signed Resolution No. 2003-076, dated August 6, 2003, a Budget Amendment for Fiscal Year '03 for the Sheriff's Department, reflecting Revenues and Expenditures in the amount of \$10,447.73 for the STEP Grant, Traffic Grant, and "Click It or Ticket" Grant. This Amendment adopts this action as part of the Fiscal Year 2003 Budget for Missoula County.

Resolution No. 2003-077 – The Commissioners signed Resolution No. 2003-077, dated August 6, 2003, a Budget Amendment for Fiscal Year '03 for the Sheriff's Department, reflecting Revenues and Expenditures in the amount of \$170,000.00 for the Airport Security Contract. This Amendment adopts this action as part of the Fiscal Year 2003 Budget for Missoula County.

Resolution No. 2003-078 – The Commissioners signed Resolution No. 2003-078, dated August 6, 2003, a Budget Amendment for Fiscal Year '03 for the Sheriff's Department, reflecting Revenues and Expenditures in the amount of \$8,776.86 for the "It's an Adult Responsibility" Grant. This Amendment adopts this action as part of the Fiscal Year 2003 Budget for Missoula County.

Agreement – Chairman Carey signed a Project Specific Agreement – General (Control No. 5309; Federal Aid No. STPE 32(43)) between the State of Montana, Department of Transportation, and Missoula County for the next phase of the Frenchtown Frontage Road trail project, which is in two segments: from Touchette Lane to Houle Creek Road and from the Frontage Road Interchange to Mill Creek Road. All terms and conditions are set forth therein. The document was returned to Greg Robertson, Public Works Director, for further signatures and handling.

Agreement – Chairman Carey signed a Construction Agreement, dated August 1, 2003, between Northwestern Energy, L.L.C. and the Missoula County Airport Industrial District, for the installation, operation and maintenance of a gas service line at East Harrier Drive (to Lots 8, 9, and 10, Block 9, Phase 2, Missoula Development Park). The total construction amount shall not exceed \$5,321.00; the new line will be installed by September 24, 2003. The document was returned to Barb Martens in the Projects Office for further signatures and handling.

Resolution No. 2003-075 – The Commissioners signed Resolution No. 2003-075, dated August 6, 2003, a Resolution to Abandon the alley between Lots 6, 7, 8 and 9 of Block 4 of the East Clinton Subdivision situated in Section 27, T 12 N, R 17 W, PMM, Missoula County. At their public meeting on July 16, 2003, the Commissioners found the abandonment to be in the public interest as the alley is not needed for public right-of-way purposes.

**PUBLIC MEETING – August 6, 2003**

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

**Pledge of Allegiance****Public Comment**

None

**Routine Administrative Actions**

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$884,705.89. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

**Bid Award: Enhanced 9-1-1 Equipment (9-1-1 Services)**

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

Enhanced 9-1-1 gives the ability to automatically identify the physical location of the phone from which the 9-1-1 call is being placed. This equipment is one part of what is needed to provide that enhanced level of service. The Surveyor's Office has also been working on the Master Street Addressing Guide. That is getting very close to the required 95% accuracy level. It is now time to get the equipment in place. This equipment is capable of not only enhanced services for land line phones, but is also capable of Phase II wireless service for cell phones. Some additional work will need to be done with the wireless carriers to implement the wireless part of E9-1-1.

In May, 2003, an RFP was issued for this equipment. Two vendors responded, both offering essentially the same product, equipment from Plat Equipment, Inc. The difference between the two lies in the on-going maintenance, which can be more important than the initial installation.

Industrial Communications proposal for on-going maintenance, at \$5,140 per year, is substantially less than Qwest at \$16,252 + 7%. Industrial Communications has a working partnership with Montana Electronics, who does all the radio maintenance work. Montana Electronics will also be doing the maintenance on the E9-1-1 equipment. They are a local firm with which the County already has a working relationship and they are the less expensive proposal with regard to on-going costs.

The initial installation, including the second year of warranty and the Reporting package, will be \$245,675. Annual maintenance after the second year will be \$5,140. This will be covered by "Quarter Money" and is presently included in the Fiscal Year 2004 proposed 9-1-1 budget. Quarter Money is the tax collected on phone bills specifically for Enhanced 9-1-1.

It is the recommendation of the Emergency Services Department to award the bid for Enhanced 9-1-1 equipment to Industrial Communications of Billings, including a second year of warranty and the optional proposed Data Capture/Analysis/Reporting Module.

Chairman Carey asked what the life expectancy was for this equipment.

Jane Ellis stated it would be approximately 5 to 7 years before a significant upgrade was necessary. It is a computer system and they only last so long. It would not be a complete change of the system however, probably just software and some hardware upgrades. The bid was to specifically address equipment that would be capable of identifying cell phone locations as well as land lines. There are 13 other counties in Montana that have Enhanced 9-1-1 deployed. There are several places in the country where wireless enhanced 9-1-1 is in place, but there are no other counties in Montana which have the service. Another enhancement that may happen even before the wireless identification is "Reverse 9-1-1." That is the ability to record a 30 second message and then identify a particular area and have the system automatically call every resident in the area to deliver the message. This could be used during emergency situations to advise residents of potential evacuations or preparation. That should be coming up within the next year to 18 months. Equipment for Reverse 9-1-1 would have to be added to what is being requested now. This equipment will deal with incoming phone calls and will be located in the 9-1-1 Center at the Courthouse.

Commissioner Curtiss moved that the Board of County Commissioners approve awarding the bid for Enhanced 9-1-1 Equipment to Industrial Communication of Billings and approve a second year of warranty and the optional proposed Data Capture/Analysis/Reporting Module, in the amount of \$245,675. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

#### **Hearing (Certificate of Survey): Currie Family Transfer**

Chairman Carey opened the public hearing.

Mike Sehestedt presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Government Lots 10 and 11 and the southwest one-quarter of the southeast one-quarter of Section 24, Township 12 North, Range 17 West.

Allan L. and Debra J. Currie have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current two parcels are approximately 10 acres and 100 acres in size, located near Clinton, MT. Allan and Debra Currie propose to create one twenty acre parcel for transfer to their son, David Allen Currie (Tract 1), for residential purpose, adjust the southeasterly and southwesterly parcel boundaries to make the parcels more manageable and keep two remaining parcels (Tract 2 – 55 acres and Tract 3 – 35 acres) for residential purposes as well. The boundary relocation has been approved, pending approval of the family transfer.

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

Jim Weatherly, WGM Group, stated he was representing the Curries. Dr. and Mrs. Currie live in Great Falls. Dr. Currie was unable to reschedule his patients so they could be present today. This was BLM property until 2001. BLM traded many of their small, isolated tracts of land for management purposes and this 110 acres was part of that process. It was sold to the Johnson Brothers in February, 2001. While it was BLM property, a portion was submerged behind a dam that used to exist. The dam provided irrigation water for a ranch that is no longer in existence. The dam was rated as a high hazard and was removed. The land was deeded to the Johnson Brother in two parcels, one 10 acres in size and the other 100 acres. The configuration of the two parcels was done in a very confusing manner to the Johnson Brothers and subsequently sold to the Curries in the same configuration. There are a couple of roads across this property, Wallace Creek Road and a private road that serves the property. The road divides the property. After the Curries purchased the property, the State of Montana asked them for easements across the property to access land to the south. At that time, the Curries felt it was necessary to decide what to do with this property, to make sure the road was located in the proper place. To the west of the property is the Spring Valley subdivision, platted in 1980, with 2 to 4 acre tracts. South of Wallace Creek are large parcel ownerships. Above Wallace Creek, all of the drainages have numerous patented mining claims that are a maximum of 20 acres in size. Also, south of Wallace Creek there is no timber. North of Wallace Creek was selectively logged. After review, it was noted that the 10 acre parcel was unmanageable in its current configuration and the boundary should be relocated south of Wallace Creek Road to create two larger tracts more in character with the surrounding tracts. The Curries have a 15 year old son and felt it was a good time to put a portion of the property in a trust for him. They did create a trust for him until he is 18 years of age. Because of the need to reconfigure the land, they felt this was the best overall plan for it.

Mike Sehestedt asked where the old mill site was located.

Jim Weatherly stated the only buildings he saw in some old photos were immediately south of the dam, east of the 10 acre parcel. All of the buildings have been removed.

Commissioner Curtiss stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. She asked Mr. Weatherly if that was the Curries intention, to transfer this land to their son.

Jim Weatherly stated that was their intention and the trust for their son has been created.

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

Commissioner Curtiss moved that the Board of County Commissioners approve the request by Allan and Debra J. Currie to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Chairman Carey stated that the applicant would receive a letter of approval within a week or two. All necessary permits and other requirements need to be obtained to build on the land. The approval today is only for the division of land; it does not guarantee access or services, nor does it grant Health Department, zoning or planning approval.

**Hearing (Certificate of Survey): Lewis Family Transfer**

Chairman Carey opened the public hearing.

Mike Sehestedt 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 4652, located in Section 24, Township 14 North, Range 20 West, P.M.M., Missoula County, Montana.

Paula J. and Berest D. Lewis have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 4.4 acres in size, located near Missoula, Montana. Paula and Berest Lewis propose to create one approximately 2.2 acre parcel for transfer to their daughter, Jessie Lewis, for residential purposes and keep the remaining approximately 2.2 acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 1316	1977	20 + acres	Paul, Ruth and Natalie Hanson	
COS 1472	1978	2 Family Transfers and 1 Occasional Sale	Ione Inabnit	
COS 1479	1978	1 Mortgage Exemption	Ione Inabnit	
COS 2751	1982	Boundary Relocation	Elden Inabnit	
COS 4652	1996	Boundary Relocation	Elden Inabnit	

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

Paula Lewis was present and came forward to answer any questions the Board may have.

Chairman Carey stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. He asked Mrs. Lewis if they were going to transfer this land to their daughter.

Paula Lewis stated this transfer was definitely so her daughter would have a place. They want her to be there forever.

Mike Sehestedt stated that in the past, the family transfer exemption had been abused. To try to avoid that sort of abuse, the Board must ask each applicant this personal question. It inconveniences the honest and he apologized for that.

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

Commissioner Curtiss moved that the Board of County Commissioners approve the request by Paula J. and Berest D. Lewis to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Mike Sehestedt stated that the Lewis' would receive a letter of approval within a week or two. All necessary permits and other requirements need to be obtained to build on the land. The approval today is only for the division of land; it does not guarantee access or services, nor does it grant Health Department, zoning or planning approval.

**Hearing (Certificate of Survey): Davis Family Transfer**

Chairman Carey opened the public hearing.

Mike Sehestedt presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Lot 8 of Grass Valley Tracts, located in the southwest one-quarter of the southeast one-quarter of the southeast one-quarter of Section 29, Township 14 North, Range 20 West.

Walter C. and Betty K. Davis have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 5 acres in size located near Missoula, Montana. Walter and Betty Davis propose to create one approximately 1 acre parcel for transfer to their daughter, Traci Anne Davis, for residential purposes and keep the remaining approximately 4 acre parcel for residential purposes as well.

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

Betty Davis was present and came forward to answer any questions the Board may have.



Chairman Carey stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. He asked Mrs. Davis if they were going to transfer this land to their daughter.

Betty Davis stated that was correct.

Mike Sehestedt stated that all necessary permits and other requirements need to be obtained to build on the land. The approval today is only for the division of land; it does not guarantee access or services, nor does it grant Health Department, zoning or planning approval.

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

Commissioner Curtiss moved that the Board of County Commissioners approve the request by Walter C. and Betty K. Davis to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Mike Sehestedt stated the Davis' would receive a letter of approval within a week or two.

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

#### THURSDAY, AUGUST 7, 2003

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

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated August 6, 2003, with a grand total of \$25,000.00. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated August 7, 2003, with a grand total of \$36,614.37. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

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

Addendum – The Commissioners signed a cover letter to Mary McCrea, Office of Planning and Grants, and an Addendum for Additional Provisions to an Agreement to Sell and Purchase (dated April 18, 2003) between Missoula County ("Seller") and Woodahl Land and Livestock Company, LLC (Harley-Davidson Motor Company) ("Purchaser"), concerning property in the Missoula Development Park ("MDP"). The letter states approval of the following provisions: 1) Amendment to the Phasing Plan for the MDP to allow at this time the platting of Lot 10, Block 9, Phase 5A; and 2) Minor amendment to the preliminary plat that allows a small portion of Park 10 to be incorporated into the lot area of Lot 10, Block 9, Phase 5A. The Release Date is September 1, 2003." All other conditions included on the Addendum are considered acceptable by the Buyer and released. The document was returned to Barb Martens in the Projects Office for further handling.

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Gary Peterson, DDS, for the provision of dental services for the Partnership Health Center Urgent Care Clinic as specified by Dr. Ryan Huckleby. The total compensation will be \$625 per day and \$25 for each patient over 25 patients per day. This contract will commence on July 10, 2003, and may be terminated by either party unilaterally by giving notice of termination in writing at least 30 days prior to the date of intended termination. The document was returned to Terry Delgadillo at PHC for further signatures and handling.

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Lisa Rae Hill, CPC Medical Consulting, for services to complete necessary Medicare and Medicaid billing work to meet requirements, and to examine and improve the billing system. The total amount shall not exceed \$8,000.00. The term will be July 23, 2003 through June 30, 2004. The document was returned to the Health Department for further handling.

Other items included:

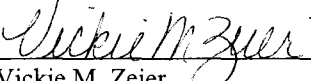
- 1) The Commissioners discussed the building code consultant options and made a decision to do all of what Montana State does.
- 2) The Commissioners discussed the pending August 25, 2003 visit to Missoula County of two inspectors from the Department of Justice for Project Civic Access, which reviews ADA compliance. The Commissioners agreed to have Art Garner (retired Facility Maintenance Supervisor) act as a guide for the DOJ visit.

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

#### FRIDAY, AUGUST 8, 2003

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Carey worked on a Habitat for Humanity building project during the day.

Plat – The Commissioners signed the Plat for Wilcox Addition, a five lot summary subdivision, located in the N½ and the SE¼ of Section 22, T 12 N, R 17 W, PMM, Missoula County, a total area of 16.09 acres, with the owners of record being George E. and Anne J. Wilcox.

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

**MONDAY, AUGUST 11, 2003**

The Board of County Commissioners did not meet in regular session. Commissioner Evans was on vacation the week of August 11<sup>th</sup> through the 15<sup>th</sup>; Commissioner Carey traveled to Helena to attend a meeting of MACo's Urban and Rural Counties Committee after stopping briefly at the office for signature items.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated August 7, 2003, with a grand total of \$17,130.59. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated August 8, 2003, with a grand total of \$51,468.72. The Claims List was returned to the Accounting Department.

Signature Page – The Commissioners reviewed and signed one (1) Claims Signature Page for the Larchmont Golf Course Accounts Payable Invoice Register dated August 8, 2003, in the amount of \$33,981.75. The Signature Page was returned to the County Auditor.

**TUESDAY, AUGUST 12, 2003**

The Board of County Commissioners met in regular session; a quorum of members was present. In the evening, Commissioner Carey attended a Black Mountain Fire Meeting held at the Fire Station on Mullan Road; Commissioner Curtiss attended a Fire Meeting at the Condon Community Center.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated August 8, 2003, with a grand total of \$138,419.08. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated August 11, 2003, with a grand total of \$41,090.42. The Claims List was returned to the Accounting Department.

**ADMINISTRATIVE MEETING**

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

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 16 - Pay Date: August 8, 2003. Total Missoula County Payroll: \$871,967.19. The Transmittal Sheet was returned to the Auditor's Office.

Resolution No. 2003-079 – The Commissioners signed Resolution No. 2003-079, dated August 12, 2003, authorizing the Missoula County Sheriff to close roads and to order the evacuation of areas threatened by fire upon the request of the incident commander for the fire agency charged with responsibility for the particular fire. The Sheriff's Office will maintain an account of expenditures during this fire emergency.

Agreement and Lease – The Commissioners signed an Agreement, dated August 12, 2003 between the Missoula County Fair Board and the Missoula Area Youth Hockey Association regarding the construction and lease of certain artificial ice facilities at the Fairgrounds. All terms and conditions are set forth therein.

Agreements – The Commissioners signed four (4) Sanitary Sewer Grant Program Agreements and one (1) Amendment for Assistance to Owner-Occupied Households Secured by Real Property, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. The Agreements provide funds for sewer improvements and connection to the City of Missoula municipal sewer system, as follows:

- 1) Agreement for full assistance, dated August 7, 2003, with Delbert Erickson, 525 Iowa Avenue;
- 2) Agreement for partial assistance, dated August 7, 2003, with Robert M. and Sharolet A. McDonald, 604 Sommers Street;
- 3) Agreement for full assistance, dated August 5, 2003, with David W. Retallack and Karen J. Peterson, 341 Minnesota Avenue;
- 4) Agreement for full assistance, dated August 11, 2003, with Rena Dietchler and Vera McCurley, 1 Braaten Place; and
- 5) Amendment to Agreement for Assistance, dated August 8, 2003, with Sandra D. Hart, 528 Speedway Avenue.

All sewer development fees and on-site connection costs and fees are as set forth therein.

Contract – The Commissioners signed a Professional Services Contract between Missoula County (for the Historical Museum at Ft. Missoula) and Scott Clarke, d/b/a Clarke Design, for the creation of the final design and fabrication of an exhibit, "Following in the Footsteps – Before and After Lewis & Clark." The exhibit will be open to the public

March 28, 2004. The total amount shall not exceed \$20,000.00 (which has already been included in the FY 2004 budget and funded by grants obtained for the exhibit.

Emergency Resolution No. 2003-081 – The Commissioners signed Resolution No. 2003-081, dated August 12, 2003, an Emergency Proclamation declaring an emergency to exist in Missoula County effective August 10, 2003, due to extreme fire conditions and several large fires burning which have the potential to threaten lives and property.

Other items included:

- 1) The Commissioners voted to appoint James Lee Stobie to a one-year term on the Upper Swan Valley Fire Service District Board. A letter to Mr. Stobie will follow.

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

**WEDNESDAY, AUGUST 13, 2003**

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

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated August 11, 2003, with a grand total of \$191,466.87. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtiss signed six (6) Claims Lists, dated August 12, 2003, with the following grand totals:

- 1) \$17,432.94;
- 2) \$24,899.40;
- 3) \$791.02;
- 4) \$661.14;
- 5) \$13,040.70; and
- 6) \$15,060.84.

The Claims Lists were returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtiss signed three (3) Claims Lists, dated August 13, 2003, with the following grand totals:

- 1) \$3,438.39;
- 2) \$49,999.00; and
- 3) \$294,815.49.

The Claims Lists were returned to the Accounting Department.

**CHIEF ADMINISTRATIVE OFFICER MEETING**

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

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Patty Morse, AM/PM Bookkeeping, Inc., for the completion of accounting and project reporting for the Weed District for FY 2003. The total amount shall not exceed \$2,500.00. This contract extends the original contract until July 31, 2004.

Contract – The Commissioners signed an Amendment to the Professional Services Contract (dated May 23, 2003) between Missoula County and Helena Weed Control, LLC, adjusting the total acres treated on the Missoula County Weed District County Road Project Frenchtown Frontage Road, and increasing the compensation total amount not to exceed \$5,569.90.

Memorandum of Understanding – Chairman Carey signed a Memorandum of Understanding, dated August 13, 2003, regarding wildland fire incidents within the boundaries of Missoula County. Area Commander Rex Mann is assigned to the Northwest Area Command in Montana to manage fire suppression activities on incidents; Missoula County has health, welfare and safety responsibilities prescribed by statute and policy. All objectives, priorities, emergency authority, functional responsibilities and other terms and conditions are set forth therein.

Board Appointment – The Commissioners approved and signed a letter, dated August 15, 2003, to Kathleen Jackson, confirming her appointment as an “alternate member” of the Missoula Public Library Board of Trustees to fill an unexpired term through December 31, 2005.

General Release – At the Departmental Meeting with the County Attorneys held on January 13, 2003 the Commissioners signed a General Release in the matter of Ken and Carol Knieper, et. al vs. County of Missoula, et. al, pertaining to the Country Crest Subdivision (one of the Mullan Corridor subdivisions scheduled to be connected to the sewer system). The amount of the settlement is \$125,000.00. All other terms and conditions are set forth therein. The document was returned to Marnie McClain, Deputy County Attorney, for further handling.

Tax Abatement Requests – At the Clerk & Recorder’s Departmental Meeting with Vickie Zeier, held on August 13, 2003, the Commissioners approved requests and/or letters regarding the following:

- 1) To approve a request from Steven Goss to waive penalty and interest for 2<sup>nd</sup> half of 2001 real estate taxes for Taxpayer ID #761009;
- 2) To deny a request from Jan R. and Mary E. Hulquist to waive penalty and interest for 2<sup>nd</sup> half of 2002 real estate delinquent payment for Taxpayer ID #467200;
- 3) To deny a request from R. Mark and Sandra Bryant to refund vehicle taxes and fees paid for title #G144049;

- 4) To deny a request from Mary Lou Cooper to waive penalty and interest for 2<sup>nd</sup> half of 2002 real estate taxes for Taxpayer ID # 375306;
- 5) To approve a request from Adele Valois to refund penalty and interest paid on 2<sup>nd</sup> half of 2002 real estate tax bill for Taxpayer ID #1937100;
- 6) To deny a request from Kim Lugthart to waive penalty and interest for 2<sup>nd</sup> half of 2002 real estate taxes for Taxpayer ID #415807;
- 7) To deny a request from Keerie Gleason to waive penalty and interest for 2<sup>nd</sup> half of 2002 real estate taxes for Taxpayer ID #3343501;
- 8) To approve a request from Linda Dennison to waive penalty and interest paid on 2002 2<sup>nd</sup> half real estate tax bill for Taxpayer ID #3013301;
- 9) To deny a request from Pat Schlauch, Controller, to waive penalty and interest for 2<sup>nd</sup> half of 2002 real estate taxes for the Missoulain (Taxpayer IDs #1340901 and #5851710);
- 10) To deny a request from Desmond and Bernice L. McDonald, to waive penalty and interest for 2<sup>nd</sup> half of 2002 real estate taxes for Taxpayer ID #1588005;
- 11) To deny a request from Joseph Kogan to waive penalty and interest for 2<sup>nd</sup> half of 2002 real estate taxes for Taxpayer ID #1695101;
- 12) To delete the 1990 delinquent tax amount appearing for BFC Real Estate (Taxpayer ID #25404); and
- 13) To write-off the 1986 through 1992 personal property business taxes that remain outstanding for various Taxpayer IDs.

#### **PUBLIC MEETING – August 13, 2003**

The Public Meeting was called to order at 1:30 p.m. by Chairman Bill Carey. Also present were Commissioner Jean Curtiss, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall, County Public Works Director Greg Robertson and Bidding Officer Doreen Culver. Commissioner Barbara Evans was on vacation.

#### **Pledge of Allegiance**

#### **Public Comment**

None

#### **Routine Administrative Actions**

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$604,553.64. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

#### **Bid Award: Window and Stair Restoration (Facilities Management) – Postponed from July 30, 2003**

Doreen Culver, Bidding Officer, presented the staff report.

This is a request to award the bid for the Window and Stair Restoration Project on the old side of the Courthouse.

Bids were solicited for the restoration of the windows and front steps on the old side of the Courthouse. Two bids were received:

Bidder	Base	Add-On	Alternate	Total (not including Alternate)
Pew Corporation	\$107,200	\$12,580	N/A	\$119,780
Burton Construction	\$ 85,000	\$ 5,621	\$7,350	\$ 90,621

Burton Construction was the apparent low bidder. Qualification for Burton Construction and their sub-contractors were checked by the architects and found to be acceptable. It is the recommendation of Facilities Management to award the bid to Burton Construction in the amount of \$90,621.00, as the lowest and most responsive bidder.

Commissioner Curtiss moved that the Board of County Commissioners approve awarding the bid for the Window and Stair Restoration Project on the old portion of the Courthouse to Burton Construction in the amount of \$90,621, as the lowest and most responsive bidder. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

#### **Bid Award: Cote Lane Walkway (Road Department) – Postpone to August 20, 2003**

Chairman Carey noted that the bid award for the Cote Lane Walkway had been postponed to August 20, 2003.

#### **Hearing: Petition to Vacate Unnamed Road (Huson Area)**

Chairman Carey opened the public hearing.

Mike Sehestedt presented the staff report.

This is a petition to vacate “a forty foot wide public highway as described in Deed Book 139, Page 276, from the south right-of-way of Interstate 90 to the north right-of-way boundary of Montana Rail Link, located in the east one-half of Section 25, Township 15 North, Range 22 West, Missoula County, Montana (Huson area).”

The reasons for the request are as follows:

- 1. It was created to access old Highway 10 and was never built.
- 2. It is not needed; Highway 10 has been abandoned in this area.
- 3. It is impractical; if this highway were to be built, it would have to cross Interstate 90.

The following landowners have been notified: Keith H. Jutila and Deborah J. Jutila.

Parts of this unnamed road will continue to exist from the frontage road to the north and from the railroad right-of-way south to Mullan Road.

John Layman asked if he could see the map that shows the road to be vacated. Greg Robertson showed him the map with the road to be vacated. After viewing the map, he did not have any objection to the petition.

Commissioner Curtiss stated that the petition was only for a small portion of this unnamed road. Is there a way to vacate the entire road as it is unnecessary.

Mike Sehestedt stated that cannot be done for jurisdictional reasons. A petition and notice are required to act upon the vacation. The petition described the segment that lies between the railroad right-of-way and I-90. The Board does not have jurisdiction to go beyond what is described in the petition. After taking public testimony, the Board needs to recess the hearing and arrange for a site inspection by the County Public Works Director and a Commissioner. A time needs to be set to continue the hearing, receive a report from the site inspection and make a decision on the petition.

Chairman Carey recessed the public hearing and set a date of August 20, 2003 to receive a report from the site inspection and make a decision on the petition.

**Hearing (Certificate of Survey): Maclay Family Transfer**

Chairman Carey opened the public hearing.

Colleen Dowdall presented the staff report.

This is a consideration to create a family transfer parcel for that parcel described as SE 1/4, SE 1/4, PLAT U 33-11-20 CONTAINING 40 ACRES (COS 1794).

H. Bruce and Mary B. Maclay have submitted a request to create two parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 40 acres in size located near Florence, Montana. Mr. and Mrs. Maclay propose to create one 10 acre parcel for transfer to their son, William Holmes Maclay, for residential purposes, one 10 acre parcel for transfer to their daughter, Sarah Elizabeth Maclay, for residential purposes, and keep the remaining approximately 20 acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 1794	1979	Parcels greater than 20 acres	Federal Land	

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act, except as listed below:

COS 449	02/23/95 Gift
Mackintosh Manor Subdivision	11/08/01 Boundary Relocation
COS 5280	06/03/02 Mortgage Exemption

Nick Kaufman, WGM Group, stated he was representing H. Bruce and Mary B. Maclay. The Maclays have three children, Tom, Sarah and William. Tom recently purchased a large part of the Maclay Ranch from his parents. Mr. and Mrs. Maclay would like to give 10 acres to each of their other children, Sarah and William. The property is located on the border of Missoula County and Ravalli County. The Maclays could not be present today. Their intent is to indeed give land to their children in accordance with the rights allowed under State law.

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

Commissioner Curtiss moved that the Board of County Commissioners approve the request by H. Bruce and Mary B. Maclay to create two parcels by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Chairman Carey stated that the Maclays would receive a letter of approval within a week or two. All necessary permits and other requirements need to be obtained to build on the land. The approval today is only for the division of land; it does not guarantee access or services, nor does it grant Health Department, zoning or planning approval.

**Consideration: Stillwaters on the Clark Fork (5 lots on 17 acres) – Near the Junction of Kona Ranch Road and Mullan Road**

Jackie Corday, Office of Planning and Grants, presented the staff report.

Yellow Stone Fly LLC, represented by Nick Kaufman of WGM Group, is requesting approval to subdivide 17.29 acres of a 43.38 acre parcel (Tract B of COS 5074) into 5 lots that vary in size from 1 to 5 acres. The remaining 26.03 acres of Tract B, indicated as “Portion A” on the preliminary plat, will be transferred to adjacent Tract 8 of COS 4186 by a

boundary line relocation. The property is located off Kona Ranch Road near the intersection of Mullan Road. The proposed access is by a new private road, Royal Coachman Drive, that will connect to Kona Ranch Road.

The applicant also owns approximately 61.53 acres to the east and south (Tracts 3, 4 and 8 of COS 4186). The submittal packet includes a master plan that shows an additional 20 lots on Tract 8 and the main private road looping through Tracts 3 and 4 to the south for more lots in the future. The applicant has submitted the 20 lot proposal, Stillwaters on the Clark Fork No. 2, which is now out for agency comment.

The land is currently a vacant, level field. It has been used for agricultural production of hay and grazing. The surrounding land uses range from agriculture and large tract residential to the south, east and west and 5 acre residential lots to the north. El Mar Estates and the recently approved Phantom Hills are located approximately one-quarter mile to the southeast.

A neighboring landowner, Bonnie Snavelly, has challenged the partition of the Kona Ranch (the subject property is a portion of the former ranch), between Douglas Miller (the immediate prior owner of the subject property) and herself. Her appeal is pending in the Ninth Circuit Court of Appeals. The issue of ownership will be confirmed by the title report at the time the final plat is filed.

There are two variance requests. The first is to exceed the maximum cul-de-sac length of 1,000 feet for Royal Coachman Drive. This road comes off of Kona Ranch Road, then goes due south then due west. The total length of the road is 1,400 feet. This is a temporary cul-de-sac. As shown on the master plan, the road will be extended to the south and will eventually become a loop road. Because the future plans are for it to be a loop road, both OPG and Public Works support the variance request.

The second request has to do with providing pedestrian facilities on Kona Ranch Road. OPG recommends conditional approval of the variance. Based on a site visit and discussions with Public Works, it was determined that it would be desirable to have an asphalt trail separated from the road from the eastern edge of Royal Coachman Drive to Mullan Road. Mullan Road has an approximately 8 foot wide asphalt shoulder that this trail could connect with to provide access to El Mar Estates and Phantom Hills.

In Condition 5, staff has recommended a 5 foot wide walkway, although the possibility of 8 feet was discussed at Planning Status. It did not appear that the applicant would object to the additional width, so the condition could be modified.

Condition 1 requires the pavement width to be 15 feet on the two one-way entry drives. Nick Kaufman said that the entry way may be revised to single two-way street which would eliminate the need for this condition. Condition 2 requires a contribution to the Mullan Road transportation system for the Flynn Lane/Mullan Road and Mullan Road/ Reserve Street intersections. There are two conditions related to water and irrigation rights. Bonnie Snavelly has raised the question of whether the water rights were actually transferred. Whether or not they were is something that can be determined later. These conditions could apply and staff recommends they be adopted if it is determined that water right do exist. Fire protection will be provided by residential sprinkler systems. There are standard conditions related to living with wildlife.

Chairman Carey asked for public comments.

Nick Kaufman, WGM Group, Inc., developer's representative, stated that Don McArthur, also present today, is an architect in Missoula. Don was instrumental in making some significant changes to the site master plan design. Jackie mentioned the zoning on the property which is one dwelling unit per acre. This could have been designed to that density with lots 150 feet wide by 300 feet long; however, this area is traditionally rural and agricultural. They tried to match the character of the area with the development. On the north side of Kona Ranch Road are 5 acre tracts. All of the lots in Stillwaters that front on Mullan Road are also 5 acre tracts, but slightly different than those on the north side of the road. Those are fairly narrow and long, where as these are wide and not as narrow. These four 5 acre tracts correspond to six 5 acre tracts across the road. There is more open space associated with this design, which also incorporates three view corridors. Building envelopes are proposed for each lot so outbuildings and homes are not located haphazardly, but clustered to provide view corridors. Initially, 8 foot wide paved trails were proposed. They would like to go to a 5 foot width for the interior sidewalks, which could be constructed of either asphalt/concrete or granite/sand, subject to approval by Public Works and OPG.

Don McArthur, McArthur, Means and Wells Architects, stated that he brought some drawings to show the types of homes that might be constructed. They were involved in site planning as well, trying to lay out how the houses would work in the long term. They are some tight restrictions to preserve the view corridors as Nick mentioned. The intent has been to keep the houses close together with heavily treed zones and large areas of open space between the houses to try to preserve the rural character and provide view corridors for both residents and those who drive by the development. They were also involved in designing some model homes which show the kind of character and quality they want to achieve. The intent is to limit styles that are appropriate to the area and blend and connect with the landscape as much as possible. All of the houses will have extensive patio and porch areas that will extend to the landscape.

Nick Kaufman stated that Condition 1 refers to the entry one way streets. That has been reconsidered and they now propose a standard street section without the center boulevard. Greg Robertson indicated that center boulevards have caused some concerns with snow plowing. If Greg is in agreement with the change, Condition 1 could be deleted. Condition 3 states that typical street and walkway sections shall be subject to review and approval by Public Works.

Greg Robertson stated that would be fine with him.

Commissioner Curtiss asked if the record could be used to indicate the change in street section.

Colleen Dowdall stated the findings would need to be changed to reflect the redesign of the entry way streets.

Nick Kaufman stated that he would also like to add "and OPG" to the end of Condition 3 so that both Public Works and OPG will review and approve street and walkway sections. He would like to explore the option for a walkway design to

provide pedestrian connections in rural subdivisions. Don McArthur and the landscape architect have some interesting ideas. There are no problems with Conditions 3 through 17. He also recognized and thanked Andy Patton who spoke with them regarding the clouded water rights issues. He agreed with Jackie that the conditions regarding water rights should be left as is. The only other issue is Condition 2 regarding the two contributions to the Mullan Road transportation system. He mentioned the difference between this subdivision and Phantom Hills. Phantom Hills subdivision accesses directly onto and abuts Mullan Road. This subdivision has another route to town via Blue Mountain/Big Flat Road and across Maclay Bridge or even out to Highway 93. There is another route via Deschamps Lane and also Mullan Road. It is not directly tied to Mullan Road in terms of access to and from town. The second concern is that portions of Mullan Road and Reserve Street are State roads. There is a responsibility of local and State government to provide essential services. The vehicles given to provide those services are income tax, gas tax and property tax. These folks are being asked to contribute double taxes, all those mentioned to provide essential services and then this new tax. Mullan Road and Reserve Street are State routes which serve industry (Smurfit-Stone), agriculture and mining, large residential and commercial uses, none of which, except new development, which have been asked for a contribution to road improvements. All of the existing uses create a substantial tax base. The value of these homes will be very high, higher even than those of Phantom Hills. The developer has asked him to convey to the Board a request to eliminate Condition 2.

Chairman Carey asked about the requirements in Condition 5.

Nick Kaufman stated that in discussion, OPG and Public Works felt it was appropriate to have an 8 foot wide asphalt walkway/bike path along Kona Ranch Road and 5 foot wide walkways in the interior of the development. Jackie and Greg are asking for a consideration to widen the walkway to 8 feet. The developer did not have any objection to that. The narrow width in the interior would offset the cost of the wider width on Kona Ranch Road.

Jackie Corday suggested that Condition 5 be changed to read: "The developer shall install an 8 foot wide separated walkway along the south side of Kona Ranch Road from the junction of Royal Coachman Drive to the eastern edge of the property. The pathway along the entry section of Royal Coachman Drive shall be located on the east side of the road and shall connect with the 8 foot pathway on Kona Ranch Road."

Commissioner Curtiss stated that it had been discussed to extend the walkway to Mullan Road. That is not required in Condition 5.

Jackie Corday stated that it could not be included because it is off-site. It was a suggestion to the developer that it be done, but it cannot be required.

Commissioner Curtiss asked if the developer agreed to do so, could it then be included in the condition.

Colleen Dowdall stated that it could be a condition of granting the variance. It would be included in Condition 5, but would be tied to approval of the variance request.

Andy Patton stated that he was an attorney representing Bonnie Snaveley and the Margueritte L. Miller Trust, who own property surrounding the major development and also part of this minor subdivision. He would like to make four points, some of which might be premature. First is the variance for the cul-de-sac. Staff's is recommended approval of the variance request with the justification that ultimately there will be roads that form a loop through the subdivision. The Commissioners are being asked to grant a variance based on things that may occur in the future but it is not known that they will indeed occur. He felt it was not appropriate to grant a variance based on future subdivisions that are not presently before the Board. Those subdivisions could be denied in which case they would be left with a cul-de-sac that varies from the regulations. He urged that the variance for cul-de-sac length not be approved. With regard to the irrigation water, it is probably premature, but it is their contention that either Bonnie Snaveley or the Margueritte Miller Trust own the rights from the Grass Valley Ditch. The rights were not acquired by Yellow Stone Fly LLC and the subdivision has no legal basis to claim water from the ditch. There is also an issue with regard to the access to the Grass Valley Ditch. In various places in the recommendation it talks about limitation to the ditch easement. The easement appears to be based on the covenants that are part of this, but, in fact, there is an easement to the ditch that pre-exists the subdivision. Access to the ditch is important for agriculture so the ditch can be maintained. There will also be a dispute in the future about the location of the present pump that provides irrigation water to much of the fields that surround the subdivision and whether an easement has to be granted to continue to use that pump location. That location is not involved in this minor subdivision, but it is within the master planned area. Finally, the County regulations provide that a platting report be submitted to the County Attorney and that all owners, lien holders and claimants sign off on the amended plat. That is a condition for minor and major subdivisions. In this case, the Margueritte Miller Trust and Bonnie Snaveley are claimants and they dispute the land ownership. It is involved in litigation. It is expected that litigation will have a final ruling by the end of this year. They would appear as claimants in a platting report, and as claimants, neither will sign off on this subdivision. They object to the subdivision.

Dana Singer stated that she lives in the area. There is a cloud on the title of ownership of this land. She did not understand how land could be sold when it was in the midst of litigation. She felt there was a problem with Yellow Stone Fly saying they own the land when they don't know if that is true.

Colleen Dowdall stated that ownership needs to be established at the filing of the final plat, when the platting report is presented to the County. If anyone has an interest in the property that is not an owner, then a consent to plat is required.

Dana Singer stated that she understands that won't happen for some time.

Colleen Dowdall stated that was correct, the applicant is given a year to file the final plat.

Dana Singer stated that if she purchased a parcel of land, money exchanged hands, then it was determined they did not own the property, what would happen.

Colleen Dowdall stated that no purchase can be completed until the final plat is filed. They cannot sell land and transfer ownership of these lots until the final plat is filed, because that is what creates the lots. The developer is allowed to sell land on a contract, but that money must be held in escrow until the plat is filed.

Dana Singer stated that Jackie said that the ownership does not transfer, but a contract is entered into.

Colleen Dowdall stated that was correct and any funds have to be held in escrow.

Dana Singer asked if the escrow was held by the County. Her concern was that she would be caught up in a lawsuit trying to get her money back.

Colleen Dowdall stated that, based on her experience, very few sales are completed in this manner until the plat is filed. Her experience is based on the fact that many times a land use planner is waiting at her door for the final plat to be signed as they have several closings waiting for that to happen. Closings typically occur after the plat is filed. One would not have a great interest in purchasing property until the plat is filed as there is not clear title and there is no legal description. The property is not divided until the plat is filed.

Commissioner Curtiss stated that Title Insurance will also be used to prove ownership.

Dana Singer asked if the Board is bothered by the fact that the court case may not be heard until the end of the year but they are being asked to approve this subdivision now.

Commissioner Curtiss stated that Yellow Stone Fly LLC probably wouldn't have spent money on this process if they felt they did not actually own this property. The Board often sees subdivisions where proof of ownership must be presented. The developer is charged with proving ownership. If the court case proves they do not have ownership, they will not be able to file the plat. It is the developer risk. The Board is approving the subdivision, but only if the developer can prove they own it.

Dana Singer stated that the Board's approval is conditioned on their ability to prove ownership, which they cannot do until the case is settled.

Colleen Dowdall stated that State law requires the County receives a platting report at the time of final plat filing. There is a two part process. Today is the preliminary plat approval where certain things had to be submitted to get the process this far. If the Commissioners approve the subdivision today, it will be based on several conditions. There will not be a condition that says "based on proof of ownership," because that condition exists separately in the law. State law says the developer will present a platting report and consent of anyone who has an interest in the property.

Dana Singer stated she was just trying to understand the process. From a common sense approach, lawsuits are about both sides believing they are right. Yellow Stone Fly has invested money because they believe they do own it but that is for the court to decide.

Chairman Carey stated that if litigation could stop subdivision proposals for happening, they never would, because someone would always sue and it would take the Board out of the loop. The Board has to look at the proposal within their jurisdiction, that the developer has meet the rules and done what is necessary. If they can show they have title to the land, then they can transfer the ownership. That is not the Board's business.

Commissioner Curtiss stated that their business is to look at the proposal, judge it on its merit, make sure it has roads and walkways and all those other things. Another thing the Board does not decide upon is if this land will have adequate water or septic approval. That happens in a different process. The Board does their portion, others do their parts, altogether it hopefully nets a well done subdivision.

Dana Singer stated that she knows about the lawsuit, but is there a requirement that the developer put potential buyers on notice that this is involved in a major lawsuit.

Colleen Dowdall stated that people who are purchasing property would be getting title insurance. If the property transfers to them and it is later decided that no one had a right to do that, then the Title Company would represent them. The Commissioners have to act because they have an application before them from someone who purports to be the owner of the land, who can probably show today that the property was transferred to them, with everyone knowing there is a dispute as to the validity of that transfer. The Board has to act and move on with the process.

Mike Gorjup stated that he lived in the area. When the Board talks about the final plat, is that for this minor subdivision, is that all that is being dealt with today.

Chairman Carey stated that was correct.

Mike Gorjup stated that if the Board approves the preliminary plat, does it allow the investor to put any infrastructure in place. How far can the developer proceed with their own risk and money.

Colleen Dowdall stated this is not relevant to the Board decision today. However, the developer can proceed with starting improvements after preliminary plat approval. It is typically what is preferred. When the final plat is filed, the County wants to know the developer has done everything needed, or they have to provide a bond for those improvements. It is preferred that all the roads are constructed prior to filing the final plat. In this case, that will be the developers risk. If they construct roads believing they have title to the property and it turns out they don't have title, a court will decide if the property has to be returned to its original state or if the property has been enhanced in value by the improvements. Again, those are things outside the review of the Board of County Commissioners. They are reviewing this to determine if it is an appropriate division of land under County Subdivision Regulations and State law.

Mike Gorjup stated that he wanted to know what the ramifications of the approval would be.



Colleen Dowdall stated the ramifications are not something the Board has anything to do with.

Mike Gorjup stated it concerns him and the surrounding neighbors. If someone is involved in a lawsuit like this, it would be better to go into court with some infrastructure already in place. Courts are reluctant to overturn something like that. Courts don't generally have people remove roads and septic tanks, etc. He would urge the Board to table or postpone their decision until the Court of Appeals makes their ruling.

Commissioner Curtiss stated that the Board must act on a subdivision within a given amount of time and the deadline is approaching.

Mike Gorjup stated that once improvements get going, they can go to the Appeals Court and say that they have all this infrastructure installed and sway the decision based on that.

Commissioner Curtiss stated that the developers of this property are not involved in the lawsuit. The person involved in the lawsuit was paid for this property. The people developing the property bought it from the person that is involved in the lawsuit that the court will be deciding on. The Board has to follow the State laws they are allowed to work within.

Mike Gorjup stated that he would urge the Board to table or postpone their decision.

Colleen Dowdall stated the Board does not have the authority to do that, they must act one way or the other, within 60 days of the application.

Mike Gorjup stated the Board should then deny the project.

Colleen Dowdall stated that has to be based on their purview criteria. The other side could sue the County just as quickly over failure to approve the subdivision based on a reason they can't lawfully use.

Chairman Carey stated that is a very serious consideration. If the Board is advised by legal counsel that they have no legal basis to deny the subdivision based on what they have jurisdiction over, they have no choice but to approve the subdivision. To deny the subdivision puts the citizens of the County at risk of having to pay a judgment. The Board does not make the rules but has to follow them to the best of their ability. He shared his concern that it would make it difficult once infrastructure is installed.

Mike Gorjup stated for the record that his address was 2625 Amigo Drive.

There were no further public comments.

Commissioner Curtiss stated that the proposal is to have a 5 foot interior pathway on one side of the roads. Is there adequate right-of-way to install sidewalks on the other side if it is determined they are needed in the future.

Nick Kaufman stated the right-of-way is 60 feet and there would be adequate room to do that in the future. The issue was raised about the variance for the cul-de-sac length. He spoke with Curt Belts, the Assistant Fire Chief of the Missoula Rural Fire District. The cul-de-sac serves 5 homes, not 20 homes if this were one acre tracts. Curt Belts stated he had no concerns with the development, even if it stops right here and is not expanded per the master plan, because of the low density. The design of the subdivision is also a justification for the variance request, not just what may happen in the future.

Commissioner Curtiss stated the cul-de-sac would have adequate room for snow plows and emergency equipment to turn around.

Nick Kaufman stated that was correct.

Commissioner Curtiss stated that with regard to the cul-de-sac length, Phase 2 is already in process. Even if the future development doesn't happen, there is adequate room to make Royal Coachman Drive a shorter loop road. She was comfortable with approval of the variance request. She was also comfortable with leaving the conditions regarding the water rights. If there are no water rights, the two conditions don't hinder approval, but if the water rights do exist, the conditions are needed to deal with them. She asked Nick for his opinion on the ditch easement.

Nick Kaufman stated that there is certainly an easement for the Grass Valley French Ditch. Any easements, either claimed or prescriptive, would be for someone else to sort out.

Commissioner Curtiss stated that if the 5 foot interior walkways are deemed acceptable, would there need to be amended findings to support the change.

Jackie Corday stated there would need to be some amendments to the findings under the Pedestrian section which could be addressed when the approval letter was drafted. There are still some things that need to be addressed, one is the elimination of Condition 1.

Colleen Dowdall stated that Public Works would have to approve any design.

Greg Robertson stated that language could be added to Condition 1 such as: "... unless the developer proposes an alternate cross section suitable to Public Works."

Commissioner Curtiss stated that findings under the Roads section could be amended and the condition could be deleted.

Colleen Dowdall stated that would work. If the condition is deleted and the developer comes in with the split design, it still has to be approved by Public Works, who made the original finding that 12 feet was not adequate. In regard to

Condition 2 addressing the Mullan Road transportation system fees, she wanted to know if that was discussed during their pre-application meeting.

Jackie Corday stated that the first pre-application meeting was held in May, 2002, and another one in March, 2003. She did not think that the report for Phantom Hills was finalized at that time. The determination of assessing these fees was probably not made at that time.

Colleen Dowdall stated she is reviewing another report that is asking for the fee and that pre-application meeting was held in January, 2003. She is having some discomfort with that; it is not in the regulations that these fees are being imposed. The fees are being requested for all projects accessing Mullan Road. She would like the discussion of these fees to happen at the pre-application meeting, so a developer can factor those costs into the development. A fee like this is not in the regulations and if something outside the regulations is going to be requested, notification to the developer should be early in the process.

Greg Robertson stated this requirement was included in his Agency Comment during the application process.

Jackie Corday stated that the Subdivision Regulations Article cited in relation to the request is mitigation for certain impacts and the requirement was included in the agency letter dated in June, 2003.

Commissioner Curtiss asked about the inclusion of OPG in reviewing street and walkway sections in Condition 3.

Jackie Corday stated that was in regard to the sidewalks, plans have changed since the plat was submitted. This will allow OPG to review the change.

Commissioner Curtiss stated that the variance request for pedestrian circulation was recommended to be conditionally approved. The walkway on Kona Ranch Road could be extended 800 feet to the west and connect with nothing or be extended 600 feet to the east to connect with Mullan Road, which will have a purpose.

Nick Kaufman asked if the developer could provide funds for a 5 foot walkway to Mullan Road and have the County contribute the extra three feet, for a total of 8 feet.

Commissioner Curtiss stated that he was proposing a 5 foot walkway from Royal Coachman Drive to Mullan Road.

Nick Kaufman stated that was correct.

Greg Robertson stated he would be willing to contribute the funds to widen the trail to 8 feet.

Commissioner Curtiss stated that Condition 5 could be amended to read: "The developer shall install an 8 foot separated walkway in partnership with Public Works ...."

Colleen Dowdall stated that she did not like to condition a subdivision where it required the County to do something. The condition should be more general, such as "a pathway that meets the requirements for the off-site portion."

Chairman Carey stated that something should be on the record stating this needs to be 8 feet.

Colleen Dowdall stated that could be done in the findings. The discussion has been that the developer should be responsible for 5 feet and that is what the condition should address. If the County is going to contribute to make the walkway 8 feet, that is outside the subdivision approval.

Commissioner Curtiss stated that Condition 5 did need to be amended to state that the walkway will connect with Mullan Road. Condition 5 would read: "The developer shall install a 5 foot wide separated walkway along the south side of Kona Ranch Road from the junction of Royal Coachman Drive to Mullan Road. The 5 foot pathway along the entry section of Royal Coachman Drive shall be located on the east side of the road and shall connect with the 5 foot pathway on Kona Ranch Road." Additional findings will be made to address the gentlemen's agreement of the County's willingness to expand the walkway along Kona Ranch Road to 8 feet.

Commissioner Curtiss moved that the Board of County Commissioners delete Condition 1 and amend Conditions 3 and 5 as discussed. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Article 3-2(1)(i)(a) of the Missoula County Subdivision Regulations for Royal Coachman Drive to exceed the maximum cul-de-sac length of 1,000 feet, based on the findings of fact in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners conditionally approve, as discussed, the variance request from Article 3-2(8)(A)(iii) of the Missoula County Subdivision Regulations to not provide a system of pedestrian and/or bicycle circulation along Kona Ranch Road, based on the findings of fact in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the Stillwaters on the Clark Fork No. 1 Subdivision, based on the findings of fact in the staff report and as amended to reflect the changes discussed at the meeting, and subject to the conditions as amended. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss stated that she hoped the people in the audience understand that the Board is only part of the process of approving subdivisions; legal issues get settled somewhere else and water issues get settled somewhere else.

**Stillwaters on the Clark Fork No. 1 Subdivision Conditions of Approval:****Roads and Walkways**

1. The developer shall contribute \$230 per lot to the Mullan Road transportation system fund for signaling the Flynn Lane/Mullan Road intersection and \$815 per lot to the fund for improving the Reserve Street/Mullan Road intersection. *Subdivision Regulations Article 4-1(12) and Public Works recommendation.*
2. The typical street and walkway sections, including slopes and sub base materials, shall be subject to review and approval of Public Works and OPG. *Subdivision Regulations Article 3-2(A), 3-2(B) and Public Works recommendation.*
3. The Stillwaters covenants shall be amended as follows: The last sentence of Article V, Section 1, regarding maintenance of private roads shall become a new Section 2 entitled "Private Roads and Walkways" and shall be amended as follows: "The Association shall be solely responsible for the maintenance of all private roads and walkways within the subdivision subject to the jurisdiction of these Covenants." *Subdivision Regulations Article 3-2(1)(I)(iii) and OPG recommendation.*
4. The developer shall install a 5 foot wide separated walkway along the south side of Kona Ranch Road from the junction of Royal Coachman Drive to Mullan Road. The 5 foot pathway along the entry section of Royal Coachman Drive shall be located on the east side of the road and shall connect with the 5 foot pathway on Kona Ranch Road. *Subdivision Regulations Article 3-2(8)(A)(iii), 3-2(8)(A)(iv), Public Works and OPG recommendation.*

**Fire Protection**

5. Prior to Zoning Compliance Permit issuance, plans for installation of a residential fire sprinkler system shall be approved by the Missoula Rural Fire District. *Subdivision Regulations Article 3-7(1)(E) and OPG recommendation.*
6. The Stillwaters covenants shall be amended prior to final plat approval by adding the following language: "Each residence must install an address sign at least six inches in height made of a reflective material that is clearly visible from the street." *Subdivision Regulations Article 3-1(1)(B) and Missoula Rural Fire District recommendation.*
7. The final plat must contain a waiver of the right to protest a future RSID/SID for public water for fire fighting purposes. *Subdivision Regulations Article 307(2).*

**Irrigation Water Rights**

8. The covenants shall be amended to include a section regarding transference and administration of water rights from the Grass Valley French Ditch to the Homeowners Association. The final plat shall grant irrigation ditch easements from the Grass Valley French Ditch to Lots 1-5. *M.C.A. 76-3-504(1)(i) and OPG recommendation.*
9. At the time of final plat review, the applicant shall provide evidence of transfer of the irrigation water rights to the Homeowners Association in conformance with all applicable State laws. *M.C.A. 76-3-504(1)(i) and OPG recommendation.*

**Covenant Amendments**

10. The covenants shall be amended to include the Living with Wildlife language recommended by the Fish, Wildlife and Parks Department in their letter to the applicant dated June 23, 2003. *Subdivision Regulations Section 3-1(10), FWP and OPG recommendation.*
11. Section 4 of Article X of the covenants shall be amended to require consent of the governing body to change the covenants referring to noxious weed control or revegetation, garbage, animals and pets, and wildlife. *Subdivision Regulations Section 3-1(10), FWP and OPG recommendation.*
12. Prior to final plat approval, the covenants shall be amended to include the following:
  - a. "Lot owners shall maintain their property and the Association shall maintain the Common Areas in compliance with Montana's County Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan. Lot owners shall revegetate any ground disturbance on their property caused by construction or maintenance and the Association shall be similarly obligated to revegetate any disturbed Common Areas. The vegetation should be with beneficial species appropriate for the site and should occur at the earliest appropriate opportunity after construction or maintenance is completed."
  - b. The Declarant shall be responsible for noxious weed control on all unsold lots and the Common Area until all of the lots are sold and title to the Common Area is transferred to the Association. *Subdivision Regulations Article 3-1(1)(B) and County Weed District recommendation.*
13. Prior to final plat approval, the covenants shall be amended to include the following: "EPA has designated Missoula County as having a high radon potential (Zone 1). All residences should incorporate passive radon mitigation systems into the design." *Subdivision Regulations Section 3-1(1)(D), City-County Health Department and OPG recommendation.*
14. Prior to final plat approval, the following language in Section 10 of the covenants regarding garbage shall be deleted: "... unless constructed underground in a manner not creating an unsightly area." *City-County Health Department recommendation.*

**Weeds**

15. A Revegetation Plan for disturbed sites shall be submitted to and approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and County Weed District recommendation.*

**Urban Transportation District**

16. The applicant shall petition into the Missoula Urban Transportation District prior to final plat approval. *Subdivision Regulations Article 3-1(1), 3-2(1)(3) and MUTD recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 2:45 p.m.

**THURSDAY, AUGUST 14, 2003**

The Board of County Commissioners did not meet in regular session. Commissioners Carey and Curtiss attended the MACo District 10 & 11 Counties Fall Meeting held in Hamilton.

Claims Lists – Commissioners Carey and Curtiss signed two (2) Claims Lists, dated August 14, 2003, with the following grand totals:

- 1) \$917,940.97; and
- 2) \$125,000.00.

The Claims Lists were returned to the Accounting Department.

Deed Restriction Agreement and Subordinate Deed of Trust

Chairman Carey signed a Deed Restriction Agreement and Subordinate Deed of Trust, dated August 8, 2003, between Missoula County and Amy J. Holliday, in the amount of \$25,000.00 for property located at 1421 Eaton Street, #4, Missoula, Montana, for the purpose of providing HOME Investment in Affordable Housing Program funds to assist with down payment, closing cost and, if necessary, mortgage reduction assistance, as per the terms and conditions set forth therein. The documents were returned to Jenifer Blumberg in the Office of Planning and Grants for further handling.

Resolution No. 2003-082 – The Commissioners signed Resolution No. 2003-082, dated August 14, 2003, rezoning property described as Tracts 1, 2, and 3 of COS No. 5256, Parcels 1, 2, 3, 4, and 5 of COS No. 5257, and the remainder of COS No. 5257, located in the SE¼ of Section 9 and Section 10, T 13 N, R 20 W, PMM, from C-RR1 (Residential) to the Phantom Hills Rural Special Zoning District. No protests were filed during the 30-day protest period after the first publication of the Resolution of Intent on June 29, 2003.

**FRIDAY, AUGUST 15, 2003**

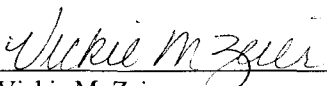
The Board of County Commissioners met in regular session; a quorum of members was present.

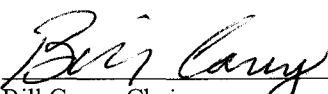
Site Inspection

In the morning, Commissioner Curtiss accompanied Public Works Director Greg Robinson on a site inspection of an unnamed road in the Huson area for the request to vacate the road.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated August 15, 2003, with a grand total of \$155,771.08. The Claims List was returned to the Accounting Department.

Plat – The Commissioners signed the Plat for Houle Creek Subdivision, located in the SE¼ of Section 18, T 15 N, R 21 W, PMM, Missoula County, a total area of 3.75 acres, with the owner of record being Timothy T. Wall.

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

**MONDAY, AUGUST 18, 2003**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was on vacation the week of August 18<sup>th</sup> through the 22<sup>nd</sup>.

Monthly Report – Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Michael McMeekin, for the month ending July 31, 2003.

**TUESDAY, AUGUST 19, 2003**

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

Claims Lists – Commissioners Carey and Curtiss signed two (2) Claims Lists, dated August 14, 2003, with the following grand totals:

- 1) \$26,248.54; and
- 2) \$14,835.00.

The Claims Lists were returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtiss signed three (3) Claims Lists, dated August 18, 2003, with the following grand totals:

- 1) \$1,575.00;
- 2) \$23,838.73 and
- 3) \$34,818.39.

The Claims Lists were returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated August 19, 2003, with a grand total of \$56,030.04. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

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

Agreement – The Commissioners signed an Office Rental Agreement, dated August 19, 2003, between the Peasley Law Office, P.C. and the SSTEP Program of the Crime Victim Program, Office of Planning and Grants, for office space located at the corner of Highway 83 and Locust Lane in Seeley Lake, Montana. The month-to-month lease shall be in effect commencing on August 1, 2003. The monthly rent shall be \$200.00.

Agreement – The Commissioners signed one (1) Sanitary Sewer Grant Program Amendment to Agreement for Assistance to Owner-Occupied Households Secured by Real Property, dated August 11<sup>th</sup>, 2003, with Gail P. Betts, 645 Michigan Avenue, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. The amendment relates to on-site connection costs and fees as set forth therein.

Amendment – Chairman Carey signed the Fiscal Year 2004 Annual Amendment to the August 11, 1994 Memorandum of Understanding between the Montana Department of Natural Resources & Conservation and the County of Missoula, which facilitates the management of wildland fires within Missoula County and provides for reimbursement of certain costs relating to those fire management efforts. All terms and conditions are set forth therein. The amendment is retroactive to July 1, 2003, and expires June 30, 2004. The document was returned to Don Morman in the Sheriff's Department for further signatures and handling.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-001 for the Health Department, in the amount of \$300.00, reflecting needed additional object codes.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-002 for the Health Department, in the amount of \$200.00, reflecting needed additional object codes.

Resolution No. 2003-083 – The Commissioners signed Resolution No. 2003-083, dated August 19, 2003, a Budget Amendment for the Sheriff/Detention Department in the amount of \$3,101,344.00, establishing Detention's tax revenue budget. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2003 Operating Budget and Revenue Estimates for Missoula County.

Contract – The Commissioners signed a Contract, dated July 14, 2003 between Missoula County Public Works and JTL Group for the supplying of 10,700 tons of Plant Mix Asphaltic Concrete, per bid specifications. The total amount shall not exceed \$256,265.00. The document was returned to Doreen Culver, Bidding Officer, for further handling.

Request for Action – Chairman Carey signed the Annual Certification of Income and Affordability Monitoring for 2003 for Homebuyer Assistance and Pioneer Group Home, standard annual certification forms for past HOME grants that are administered by Missoula County. The documents were returned to Jenifer Blumberg in the Office of Planning and Grants for further handling.

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

#### **WEDNESDAY, AUGUST 20, 2003**

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

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated August 18, 2003, with a grand total of \$215,918.59. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtiss signed three (3) Claims Lists, dated August 19, 2003, with the following grand totals:

- 1) \$29,940.99;
- 2) \$16,610.58 and
- 3) \$9,924.48.

The Claims Lists were returned to the Accounting Department.

Plat and Development Covenant – The Commissioners signed the Plat and Development Covenant for Huson Lots, located in the E½ of Section 25, T 15 N, R 22 W, PMM, Missoula County, a total gross and net area of 8.16 acres, with the owners of record being Keith H. and Deborah J. Jutila. On February 12, 2003, the Commissioners preliminarily approved the Huson Lots subdivision, subject to conditions of approval. The Development Covenant, dated August 5, 2003, sets forth the required language for these conditions of approval relating to 1) Driveway turnaround; 2) Weed control; and 3) Water supply for fire suppression.

Monthly Report – Chairman Carey examined, approved and ordered filed the corrected copy of the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending July 31, 2003.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

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

Notice of Hearing – Chairman Carey signed a Notice of Hearing on Intention to Levy Tax, dated August 20, 2003, stating that the Seeley Lake Sewer District Board of Directors has requested the Commissioners to levy a tax of \$72 per parcel of property within the Seeley Lake Sewer District for the purpose of paying for Preliminary Engineering Studies. A public hearing will be held on September 4, 2003 at 7:00 p.m. at the Seeley Lake Elementary School.

Request for Action – Chairman Carey signed startup documents for the EPA Brownfields Cleanup RLF grant. The documents are: 1) Application for Federal Assistance, Assurances – non-construction programs; 2) Certification Regarding Debarment; 3) Pre-award Compliance Review Report; 4) Certification Regarding Lobbying; and 5) Signature Certification Form. Missoula County will receive \$1 million for a Revolving Loan Fund over the course of the next five years. The documents were returned to Jenifer Blumberg in the Office of Planning and Grants for further handling.

Protection Plan – Due to the summer wildfires, Chairman Carey signed an Incident Population Protection Plan within Missoula County for the Beaver Lakes Complex area, dated August 20, 2003. The Plan contains Evacuation Authorization; Threats, Area & Objectives; Protection Stages; Implementation Plan; Anticipated Resource Requirements; and Supplemental Information, as set forth therein. The document was returned to Jane Ellis, DES Coordinator, for further handling.

#### PUBLIC MEETING – August 20, 2003

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

#### Pledge of Allegiance

#### Public Comment

None

#### Routine Administrative Actions

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$1,715,933.08. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

#### Hearing: Hidden Trail Subdivision (69 lots) – Base of Mount Jumbo, East Missoula – THIS HEARING HAS BEEN POSTPONED TO SEPTEMBER 10, 2003

Chairman Carey announced that the hearing on the Hidden Trail Subdivision (69 lots at the base of Mount Jumbo in East Missoula) had been postponed to September 10, 2003.

#### Bid Award: Cote Lane Walkway (Road Department) – Postpone from August 13, 2003

Greg Robertson presented the staff report.

This is a request to award a bid for the construction of an asphalt-surfaced bike path and walkway, approximately 0.86 miles in length, adjacent to Cote Lane in Missoula, MT. Bids were solicited as approved by the Board of County Commissioners with the following results: Montana Materials, Inc. (dba L.S. Jensen Construction and Paving) in the amount of \$98,699.59; Green Diamond Contracting, Inc. in the amount of \$75,575.94; and JTL Group, Inc. in the amount of \$120,906.10.

This is a CTEP project, largely funded with Federal Highway Administration (FHWA) monies (approximately 86%). The project was previously identified as one that is highly desired by the citizenry and the Board of County Commissioners. The County will receive reimbursement from the FHWA for approximately 86% of all costs on this project. The County share of the construction cost will be approximately \$10,150, plus 13+% for construction engineering costs. Federal funds will pay for the remainder of the cost. The Public Works Department budget for Fiscal Year 2004 reflects more than this amount, based on preliminary estimates. The Engineers Estimate for the project is \$92,042.50.

After review and evaluation of the bids, it is the recommendation of the Public Works Department to award the bid to Green Diamond Contracting, Inc. in the amount of \$75,575.94 as the lowest and most responsive bidder.

Commissioner Curtiss asked several questions about what particular line items in the bid involved and why there were such differences in the bid amounts.

Greg Robertson and Mike Sehestedt stated that the differences depend on how each contractor loads his bid. During review of the bids, one of the evaluation criteria is to make sure the bids are roughly balanced. Contractors typically load the bid to get all of the profit out as early as possible. All bids are referred to the County Attorney's Office for fiscal evaluation as well.

Commissioner Curtiss stated that the seeding costs were quite different among the bids.

Greg Robertson stated that depends on whether they contract that out or do it themselves. All projects must use hydro-seeding, hand broadcasting is not allowed.

Commissioner Curtiss moved that the Board of County Commissioners approve awarding the bid for the Cote Lane bike path/walkway to Green Diamond Contracting, Inc. in the amount of \$75,575.94 as the lowest and best bid. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

**Decision: Petition to Vacate Unnamed Road (Huson Area)**

This is a petition to vacate "a forty foot wide public highway as described in Deed Book 139, Page 276, from the south right-of-way of Interstate 90 to the north right-of-way boundary of Montana Rail Link, located in the east one-half of Section 25, Township 15 North, Range 22 West, Missoula County, Montana (Huson area)."

The reasons for the request are as follows:

1. It was created to access old Highway 10 and was never built.
2. It is not needed, Highway 10 has been abandoned in this area.
3. It is impractical; if this highway were to be built, it would have to cross Interstate 90.

The following landowners have been notified: Keith H. Jutila and Deborah J. Jutila.

Parts of this unnamed road will continue to exist from the frontage road to the north and from the railroad right-of-way south to Mullan Road.

Greg Robertson stated that he and Commissioner Curtiss conducted a site inspection on Friday, August 15, 2003. No improvements exist and there was no evidence of the road ever being in existence. He would recommend approval of the petition to vacate the road.

Commissioner Curtiss stated that she concurred with Greg's recommendation and there wouldn't be any future need for this road.

Commissioner Curtiss moved that the Board of County Commissioners approve the petition to vacate "a forty foot wide public highway as described in Deed Book 139, Page 276, from the south right-of-way of Interstate 90 to the north right-of-way boundary of Montana Rail Link, located in the east one-half of Section 25, Township 15 North, Range 22 West, Missoula County, Montana (Huson area)." Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

**Hearing: Cooney/Lincoln Rezoning (from Unzoned to C-A1) – east of Grant Creek Road, north of Interstate 90**

Monte Sipe, Office of Planning and Grants, presented the staff report.

This is a request from Scott Cooney, Gary Cooney and Grant Lincoln, represented by WGM Group, Inc., to zone a tract of land located on the east side of Grant Creek Road within the foothills, approximately one-quarter mile north of the Interstate 90/Reserve Street interchange, to C-A1: Open and Resource. This project was presented to the Planning Board in conjunction with a public hearing on August 5, 2003.

The property proposed for zoning contains 142 acres and is currently vacant. A gravel extraction operation is currently located on the property. The property is currently unzoned. The applicant is requesting zoning to C-A1 to implement the growth policy and the applicable land use designation from the 1998 Urban Comprehensive Plan Update.

The land use designations to the north include Open and Resource and Residential: Two Dwelling Units per Acre. The land use designation to the south, east and west is Open and Resource. Surrounding zoning designations include City Open and Resource (1 dwelling unit per 40 acres) and Semi-Rural Residential (1 dwelling unit per 5 acres), County C-RR1 (1 dwelling unit per acre) and unzoned land to the south and east.

The land uses permitted in the C-A1 zone are consistent with the land use designations from the 1980 Grant Creek Area Plan and the 1998 Urban Area Comprehensive Plan Update. The zoning request to C-A1 is consistent with the Comprehensive Plan and is an appropriate implementation of the recommended land use designation for this area.

The parcel is primarily hillside with slopes ranging from 10% to 25% in the western portion of the property, rising to an area of 0% to 10% in the eastern portion, where the hill starts to level off. The area associated with the drainage in the northern portions of the subject property contains steeper slopes and riparian vegetation that helps to support wildlife habitat.

The Missoula Urban Area Open Space Plan identifies a portion of this area as a Potential Cornerstone of the Open Space Plan. These areas may be developed, but any development proposal must contain appropriate park and open space provisions that address the goals of an urban open space system. Impacts to the natural resource areas will depend on the placement of future development. A density of 1 dwelling unit per 40 acres is appropriate considering the constraints and values of the property.

City and County agencies, surrounding property owners within 150 feet of the area of zoning and the Westside Neighborhood Council were notified of the request. The Missoula City-County Health Department stated they had no objection to the proposal. Montana Fish, Wildlife and Parks stated that the proposed zoning designation of 1 dwelling unit per 40 acres is appropriate for this parcel of land.

One public comment letter was received which is attached to the staff report. The property owner objects to several of the uses that C-A1 permits and stated that most of the special exceptions could have an adverse effect on the value of his land.

Additionally, this property owner stated that lime has been off-loaded onto his land and has created adverse health effects to him.

Planning Board requested that staff follow up on the issues raised in the public comment letter prior to Board of County Commissioners review. The Health Department was contacted in regard to the lime deposit. Peter Nielsen stated that the lime was transferred from Mullan Road (old sugar beet plant) to this site and that he did not think that this deposit would have any adverse health effects. Furthermore, the State Hazardous Waste Bureau handles permitting the transporting of potentially hazardous materials.

Staff and Planning Board recommend that the zoning request, for the property legally described as that portion of Government Lots 1 and 2, SE 1/4, NE 1/4 and the SW 1/4, NE 1/4 of Section 5, Township 13 North, Range 19 West, and as more particularly described in the application, from unzoned land to C-A1: Open and Resource be approved, based on the findings of fact contained in the staff report.

Chairman Carey opened the public hearing.

Commissioner Curtiss asked what the reclamation plan was for the gravel pit.

Nick Kaufman stated he was not familiar with the reclamation plan for this pit. There is a plan on file with the Department of Natural Resources and Conservation, but he had not seen it.

Commissioner Curtiss asked what the applicants planned to do with the lime.

Nick Kaufman stated the lime is in a holding pattern. Lime is used to sweeten potato fields and is added to the soil as an amendment. When it is needed for industrial or agriculture use, it will be sold. His office has been located next to this site for over five years and has not experienced any adverse effects from the lime.

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

Commissioner Curtiss moved that the request to zone the property, legally described as that portion of Government Lots 1 and 2, SE 1/4, NE 1/4 and the SW 1/4, NE 1/4 of Section 5, Township 13 North, Range 19 West, P.M.M. and further described in the application by metes and bounds, from unzoned land to C-A1: Open and Resource be approved, based on the findings of fact contained in the staff report. Chairman 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 1:45 p.m.

#### **FISCAL YEAR 2004 BUDGET HEARING**

##### **FINAL HEARING**

**WEDNESDAY, AUGUST 20, 2003 – 3:00 P.M.**  
**ROOM 201 – COURTHOUSE ANNEX**

The Final Hearing on the Fiscal Year 2004 Budget was called to order at 3:00 p.m. by Chairman Bill Carey. Also present were Commissioner Jean Curtiss, Chief Financial Officer Dale Bickell, County Auditor Barbara Berens and Chief Administrative Officer Ann Mary Dussault. Commissioner Barbara Evans was on vacation.

Chairman Carey opened the public hearing.

Dale Bickell presented a general overview of the financial condition of the County. A handout with budget information for Fiscal Year 2004 was available. He stated that the first few slides about the Financial Condition had not changed since the first presentation, so he would move on to Significant Changes.

##### **SIGNIFICANT CHANGES**

###### **Transfer of Indigent Legal Defense Costs**

- Effective July 1, 2004, most expenses related to indigent defense become the responsibility of the State. Our projections show potential savings in the Public Defenders Office and the Clerk of Court totaling \$416,000.

###### **Internal Services**

- Effective July 1, 2004, the County established the Telephone Services Fund that is responsible for maintaining the City/County phone system. These operations were previously accounted for in the General Fund. Revenues are generated through monthly phone billings to all users.
- During Fiscal Year 2003, the County established the Excess Loss Fund, which acts as a secondary layer of self-insurance for the County's three self-insurance funds (employee benefits, workers compensation, property and liability). The fund was created to lower the re-insurance requirements of the other self-insurance funds, thus decreasing the re-insurance premiums. Revenues are generated through premiums charged the other self-insurance funds.

##### **BUDGET PARAMETERS**

Cash Reserves – General Fund reserves set at 12% of total revenues, up from 10% in Fiscal Year 2003. The primary reason was that in Fiscal Year 2002, the Public Safety Fund was created which contains the Sheriff's Department operations. That is such a large fund that it left the general fund with a smaller cash balance.

Salary Increase – The Commissioners have established a base salary increase of 3% for Fiscal Year 2004.



Newly Taxable Property – The certified mill value from the Department of Revenue was lower than expected. Missoula County had its largest new construction year in recent memory; however, newly taxable property values were the lowest since 1999. Even though the projections were conservative, the mill value still came in lower than expected. The mill value was closer to the 1999 value, which is much lower than it has been in the past few years. That caused the numbers to be pared down somewhat. The Department of Revenue said they have changed the formula by which they calculate newly taxable property. There is no list of all new property, so they use a statistical model to guesstimate what the newly taxable property is and that model has been changed. The figuring is done in Helena and may use some kind of averaging so this could represent a statewide average. He has spoken to some other counties who are experiencing the same lower figures. DOR claims they have not missed any properties. It seems unusual that they do not have a list of all the new properties. They do a blended calculation between the appraised value and the newly taxable properties, then guess what the newly taxable properties will be appraised at. The County cannot get any new revenue from reappraisals, just newly taxable property. The mill value went up about two-thirds of what had been anticipated.

#### Capital Projects

- Courthouse/Annex Remodeling and Repair - \$500,000 set aside for the planned remodel of the Courthouse, particularly the vacant 4th floor. \$500,000 was set aside in Fiscal Year 2003 and an additional \$500,000 is planned for Fiscal Year 2005. The total project is expected to be \$1.4 million and is scheduled for completion in Fiscal Year 2005.
- Replacement of the County's Microwave Communications "Backbone" - \$350,000 set aside for replacement and upgrade of the current backbone. Total cost is expected to be \$650,000 over the next few years. \$150,000 was set aside in Fiscal Year 2003.

#### **BUDGET ENHANCEMENTS**

##### *Enhancements Tentatively Approved*

- Treasurer – Purchase on-line tax payment module (\$2,559)
- Financial Administration – Reserve additional monies as a contingency for the Fiscal Year 2004 NorthWestern Energy property tax billing (\$300,000); \$19,500 set aside for County building permit study
- Facilities Management – Expected increase in utilities costs (\$71,535) – electric expected to increase approximately 10%, gas expected to increase approximately 45%, for a net total of 27%; add 1 FTE apprentice position (\$28,000)
- Art Museum - \$25,000 General Fund participation in their capital campaign
- Clerk of Court – Add 0.5 FTE District Court Clerk (\$15,2389)
- Human Resources – Add 1 FTE Administrative Secretary (\$34,374)
- Parks - \$25,000 General Fund /CIP participation in Fort Missoula restroom project (\$125,000)
- Office of Planning and Grants – Add 1 FTE Planner (\$43,139) – [This has been cut from the original request for 1.5 FTE]
- Specialized Transportation – Designate \$25,750 annually to special transportation needs
- Public Defender – Reserve an additional \$100,000 District Court assumption contingency (scaled back from their initial request to add 1 FTE)
- Poor Fund – Add \$72,210 to tax base to fund Community Based Organizations at recommended level
- Sheriff/Law Enforcement – Increase in base to compensate for increased operating costs (\$46,671)
- Sheriff/Detention – State detention contract contingency (\$309,632); increase in base to compensate for increased operating costs (\$31,449). The State Department of Corrections has negotiated a contract for Fiscal Year 2004 and there will not be an increase, so the \$309,632 will be needed. The Fiscal Year 2003 figure was \$319,000 which was paid for by using a one-time tax levy. This year's increase will use half cash and half taxes.
- Judgment Levy – Consider levying one-time statutorily allowable cost of \$125,713 to pay for District Court judgment regarding Schram Bridge

##### *Capital Improvement Program*

- Repair Exterior of Public Defenders and Youth Court Buildings (\$68,000)
- Old Courthouse Renovation – Cleaning and repairing terra cotta and granite (\$168,000); repair granite base of main entrance (\$98,835); refinish wood windows (\$94,600)
- 4th Floor Annex Renovation (\$950,000)
- Replace Courthouse Boilers (\$343,150)
- Replace Bleachers at the Fair (\$41,083)
- Install Electro-Flow Units (\$24,000)

##### *Technology Fund*

- Elections system as required by Federal law (\$660,710 to be financed over 5 years)
- Criminal Justice System (\$450,000 cost, \$400,000 in grant revenue available)
- Extend fiber-optic lines to the Road Department (\$75,000)

#### **BOTTOM LINE**

The Fiscal Year 2004 budget as presented, including the enhancements that have been approved by the Board of County Commissioners, could result in a net tax decrease totaling \$206,000. The final effect on an individual taxpayer is difficult to determine due to a number of factors, such as reappraisal. The Commissioners wanted to set aside part of this in the mill levy bank as a hedge against what might happen in the next Legislative Session or Special Session, if the District Court costs change. Currently, about half of the costs of the District Court and Public Defenders levied last year have been moved into other programs. The other big contingencies right now are the forest fire costs and what happens with NorthWestern Energy, not only with the increase in utilities but whether or not the County gets the revenue from their unpaid taxes.

Ann Mary Dussault clarified that enhancement requests which show salaries include salary, benefits and other operating costs.

Dale Bickell explained the NorthWestern Energy tax bill. Their total tax bill for the year is \$3 million, about \$1.2 million is owed to Missoula County. Currently they have a delinquency from the Fiscal Year 2003 tax bill of approximately \$564,000. Public Safety would be heavily affected if the tax money is not paid. The Department of Revenue did not get tax information out timely last year. The money is expected and it shows as an accrual for each department. If NorthWestern Energy pays their delinquent taxes, each department could request that money through a budget amendment. It is not included in this year's budget.

Ann Mary Dussault stated that if the \$1.2 million owed for FY04 taxes is not paid, it could cause problems. The situation should be looked at during the mid-year budget review.

Dale Bickell stated that with monies set aside in the General Fund and other contingencies, the County may be able to continue operations without having to cut anything.

Ginny Merriam, Missoulia, asked how the NorthWestern Energy delinquency is going to affect the possibility that everyone else's taxes may decrease.

Dale Bickell stated that the reason for the decrease in taxes is due to the amount of taxes required for the Public Defenders Office.

Ginny Merriam asked about the validity of the Public Defenders Office assumption.

Ann Mary Dussault stated that historically the cost of indigent legal defense has been the responsibility of the County, then the State has had a two-level grant system where some of those costs were reimbursed. In the last Legislative session, the State did not assume the Public Defender system, but they assumed what could be interpreted as all of the costs of indigent legal defense within the District Court system, not the Justice Court system. In Missoula County's case, because there is a Public Defender Office, it might be assumed that the cost of the office would be paid for. That is not the way it works. Portions of Public Defenders time that can be documented are reimbursed after the County pays for them. The same is true is for other support costs. The County is less than confident that the State is actually going to pay what it considers legitimate costs. Also, going into the next Legislative session, one of three things could happen – things could be left as they are; the State could completely assume the Public Defenders Office; or they could decide to pass it all back to the County. The bottom line is that the County is in a state of limbo with the District Court assumption. The current level of reimbursements is not really known at this time, let alone what future payments might be.

Dale Bickell stated that many items that would seem to be Public Defender costs are considered by the State to be local government costs. The biggest example is "fitness to proceed" examinations. The State only pays for the time a client spends on a psychiatric exam; they feel the rest of the time spent in a hospital is local government costs. The County doesn't necessarily agree with that requirement.

Ginny Merriam asked the approximately amount per budget cycle.

Dale Bickell stated the County's estimate is \$416,000 annually. In addition to that figure, an additional \$100,000 has been added as a contingency.

Ann Mary Dussault stated that given the ambiguity of what could happen in the future, rather than spend the entire \$416,000 paid last year on new items this year, the Commissioners have only allocated about half that amount on enhancements and have reserved the rest in the event the County is again responsible for those costs.

There being no further comments, the public hearing was closed. There being no further business to come before the Board, the Commissioners were in recess at 3:40 p.m.

#### THURSDAY, AUGUST 21, 2003

The Board of County Commissioners met in regular session; a quorum of members was present. In the evening, Commissioner Curtiss attended the annual City-County Board and Commission Picnic, which was moved to the Florence due to the smoky weather conditions.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated August 20, 2003, with a grand total of \$5,405.04. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtiss signed two (2) Claims Lists, dated August 21, 2003, with the following grand totals:

- 1) \$544.32 and
- 2) \$250.00.

The Claims Lists were returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

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

Contract – The Commissioners signed a Professional Services Contract between Missoula County and System Building Services for cleaning services for the Partnership Health Center. All duties are listed in the Schedule A attached to the contract. The total amount shall not exceed \$1,250.00 per month. The open-end contract will begin September 1, 2003, and may be terminated by either party with a 30-day written notice.

Resolution No. 2003-084 – The Commissioners signed Resolution No. 2003-084, dated August 21, 2003, a Budget Amendment for the Financial Administration/Museum Department in the amount of \$13,527.00, which was errantly

left out of the Fiscal Year 2003 budget. In Fiscal Year 2002, the Commissioners agreed to use a portion of the Larchmont Golf Course dividend to restore the Art Museum base funding back to FY 2002 levels. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2003 Operating Budget and Revenue Estimates for Missoula County.

Agreement – The Commissioners signed one (1) Sanitary Sewer Grant Program Agreement for Partial Assistance to Owner-Occupied Households Secured by Real Property, dated August 15<sup>th</sup>, 2003, with Randy & Esther Lavoie, 196 Sommers Street, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. All sewer development fees and on-site connection costs and fees are as set forth therein.

Resolution No. 2003-085 – The Commissioners signed Resolution No. 2003-085, dated August 21, 2003, a Resolution to reset the boundaries of Election Precincts affected by the Montana Districting and Apportionment Commission redistricting the House boundaries for the State of Montana. Illustrated maps of the new precinct boundaries can be reviewed at the Missoula County Elections Office, and in the Surveyor's Office, Mapping Division, both located in the Missoula County Courthouse

Other items included:


- 1) The Commissioners approved a draft letter to Seeley Lake Property Owners in which a Notice of Hearing is included on whether or not Missoula County should levy a tax of \$72 per parcel on properties within the Seeley Lake Sewer District. The hearing will be held to help determine if there is a need for a community sewer system within the District. The hearing will be held Thursday, September 4, 2003, at 7:00 pm at the Seeley Lake Elementary School Multi-Purpose Room.

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

**FRIDAY, AUGUST 22, 2003**

The Board of County Commissioners met in regular session; a quorum of members was present. In the forenoon, Commissioners Carey and Curtiss traveled to Condon to attend a meeting at the Swan Ecological Center followed by lunch at the Crazy Horse Fire Camp.

Signature Page – The Commissioners reviewed and signed one (1) Claims Signature Page for the Larchmont Golf Course Accounts Payable Invoice Register dated August 18, 2003, in the amount of \$32,286.24. The Signature Page was returned to the County Auditor.

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

**MONDAY, AUGUST 25, 2003**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was on vacation the week of August 25<sup>th</sup> through the 29<sup>th</sup>.

Claims Lists – Commissioners Carey and Curtiss signed four (4) Claims Lists, dated August 22, 2003, with the following grand totals:

- 1) \$43,083.23;
- 2) \$22,933.23;
- 3) \$7,979.09; and
- 4) \$30,466.81.

The Claims Lists were returned to the Accounting Department.

Protection Plan – Due to the summer wildfires, Chairman Carey signed a Revised Incident Population Protection Plan for the Black Mountain 2 area, dated August 25, 2003. The Plan contains Evacuation Authorization; Threats, Area & Objectives; Protection Stages; Implementation Plan; Anticipated Resource Requirements; and Supplemental Information, as set forth therein. The document was returned to Michael Pfau in the Sheriff's Department for further handling.

Protection Plan – Due to the summer wildfires, Chairman Carey signed a Revised Incident Population Protection Plan for the Cooney Ridge Complex area, dated August 25, 2003. The Plan contains Evacuation Authorization; Threats, Area & Objectives; Protection Stages; Implementation Plan; Anticipated Resource Requirements; and Supplemental Information, as set forth therein. The document was returned to Jerry Orr in the Sheriff's Department for further handling.

Signature Page – The Commissioners reviewed and signed one (1) Claims Signature Page for the Larchmont Golf Course Accounts Payable Invoice Register dated August 25, 2003, in the amount of \$9,507.10. The Signature Page was returned to the County Auditor.

**TUESDAY, AUGUST 26, 2003**

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

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated August 25, 2003, with a grand total of \$64,155.98. The Claims List was returned to the Accounting Department.

Claims List -- Commissioners Carey and Curtiss signed the Claims List, dated August 26, 2003, with a grand total of \$885.50. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

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

Payroll Transmittal -- The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 17 - Pay Date: August 22, 2003. Total Missoula County Payroll: \$1,019,420.57. The Transmittal Sheet was returned to the Auditor's Office.

Agreements -- The Commissioners signed three (3) Sanitary Sewer Grant Program Agreements for Assistance to Owner-Occupied Households Secured by Real Property, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. The Agreements provide funds for sewer improvements and connection to the City of Missoula municipal sewer system, as follows:

- 1) Agreement for partial assistance, dated August 22, 2003, with Leslie E. and Virginia M. Blouin, 452 Colorado Avenue;
- 2) Agreement for full assistance, dated August 22, 2003, with Georgena Rae Compton, 552 Colorado Avenue; and
- 3) Agreement for full assistance, dated August 18, 2003, with Lou Ann (O'Leary) Christopher, 965 Montana Avenue.

All sewer development fees and on-site connection costs and fees are as set forth therein.

Agreement -- Chairman Carey signed an Agreement between Missoula County and the Montana Department of Environmental Quality ("DEQ") (DEQ Agreement No. 504028) for the purpose of delegating to the County, pursuant to Section 76-4-104, MCA, the authority to review certain water supply, wastewater, and stormwater systems in subdivision applications. The term will be July 1, 2003 through June 30, 2005. All other terms and conditions are set forth therein. The document was returned to the Health Department for further handling.

Block Grant Memorandum -- The Commissioners signed a Memorandum from CAO Ann Mary Dussault, dated August 26, 2003 to Sheriff Mike McMeekin and Captain Don Morman, advising them that the BCC adopted a motion authorizing the filing of the application for a Fiscal Year 2003 Local Law Enforcement Block Grant, including all understandings and assurances contained therein, and directing and authorizing Captain Don Morman as the official representative of the applicant. Captain Morman is also authorized to act in connection with the application, to sign documents on behalf of the application, and to provide such additional information as may be required. The letter was returned to Don Morman in the Sheriff's Department for further handling.

Extension Request -- Per recommendation of the Office of Planning and Grants staff, the Commissioners approved and signed a letter, dated August 26, 2003 to John Kellogg, Professional Consultants, Inc., approving his request for a one year extension of the final plan approval deadline for Pony Place Subdivision. The new deadline will be August 7, 2004.

Other items included:

- 1) A discussion was held regarding the Floodplain Program.

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

#### **WEDNESDAY, AUGUST 27, 2003**

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

Claims List -- Commissioners Carey and Curtiss signed the Claims List, dated August 22, 2003, with a grand total of \$80,648.83. The Claims List was returned to the Accounting Department.

Claims Lists -- Commissioners Carey and Curtiss signed three (3) Claims Lists, dated August 26, 2003, with the following grand totals:

- 1) \$9,265.03;
- 2) \$14,809.24; and
- 3) \$4,124.16.

The Claims Lists were returned to the Accounting Department.

Claims List -- Commissioners Carey and Curtiss signed the Claims List, dated August 27, 2003, with a grand total of \$195,144.33. The Claims List was returned to the Accounting Department.

Monthly Report -- Chairman Carey examined, approved and ordered filed the 2<sup>nd</sup> Corrected Copy of the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending July 31, 2003.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

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

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Home Health of Missoula for on-call services for the Detention Center. The total compensation shall not exceed \$26.40 per hour. The term will be July 14, 2003 through July 14, 2004. All other terms and conditions are set forth therein.

Resolution No. 2003-086 – The Commissioners signed Resolution No. 2003-086, dated August 27, 2003, a Resolution of intent to zone property described as portions of Government Lots 1 and 2, SE¼ NE¼ and the SW¼ NE¼ of Section 5, T 13 N, R 19 W, PMM, Missoula County, (Cooney/Lincoln) to C-A1, Open and Resource. Written protest will be received for a period of thirty (30) days after the first publication of this Notice on August 31, 2003.

Request for Action – Chairman Carey approved and signed the Federal Annual Certification Report, dated August 26, 2003, a yearly report of expenditures utilizing shared forfeiture funds from the US Departments of Justice and Treasury (“USD”) to the Missoula County Sheriff’s Department (“SD”). Missoula County and the SD are signatories of the Federal Equitable Sharing Agreement, valid through September 30, 2003. The document was returned to Don Morman in the SD for further signatures and handling.

Task Order – The Commissioners signed Task Order No. 04-07-3-01-010-0 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 Partnership Health Center (“PHC”) for PHC to serve as an administrative site to implement a breast and cervical cancer screening and early detection program in the counties of Mineral, Missoula, and Ravalli. The total amount shall not exceed \$86,000.00. The term will be June 30, 2003 through June 30, 2004. The document was returned to Terry Delgadillo at PHC for further signatures and handling.

Request – The Commissioners approved a request, dated August 26, 2003 from Jane Ellis, Director of Emergency Services, for payment to Deb Ogden for 41 extra hours worked during the county-wide wildland fire emergencies (August 10 – 23, 2003). Ms. Ogden will be paid for “straight time” and will receive approximately \$1,067.00.

Request – The Commissioners approved a request, dated August 26, 2003 from Sheriff Mike McMeekin, for premium pay to the following exempt employees for extra hours worked during the county-wide wildland fire emergencies: Undersheriff Mike Dominick, Captain Susan Hintz, Captain Scott McDonald, and Captain Don Morman. The request was approved for “straight time” pay only.

#### **PUBLIC MEETING – August 27, 2003**

The Public Meeting was called to order at 1:30 p.m. by Chairman Bill Carey. Also present were Commissioner Jean Curtiss, Deputy County Attorney Colleen Dowdall, Chief Financial Officer Dale Bickell, Chief Administrative Office Ann Mary Dussault and County Public Works Director Greg Robertson. Commissioner Barbara Evans was on vacation.

#### **Pledge of Allegiance**

#### **Public Comment**

None

#### **Routine Administrative Actions**

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$457,363.52. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

#### **Adopt Budget for Fiscal Year 2004**

Dale Bickell, Chief Financial Officer, presented a summary of the Fiscal Year 2003-2004 Budget.

This is the final adoption of the budget after three public hearings held prior to today. Total expenditures for Fiscal Year 2004 will be \$73,313,248, which is a \$126,000 increase over Fiscal Year 2003. Tax revenue will be \$21,088,028, which is a \$457,381 increase in actual collections over last year. However, that amount is broken up into categories whereby the amount attributed to new property in the County is \$556,000, so there will actually be a net decrease to the average existing taxpayer in Missoula County of \$99,429, which is not a great amount, but at least it won’t be an increase. Additionally, the County has been able to bank \$447,000 in excess mill capacity due to savings from the District Court assumption.

Chairman Carey asked for public comments. There were none.

Commissioner Curtiss moved that the Board of County Commissioners adopt the Fiscal Year 2003-2004 Budget as presented. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Following the motion, the Board of County Commissioners signed **Resolution 2003-087** adopting the budget for Missoula County for Fiscal Year 2003-2004:

#### **ADOPTING A BUDGET FOR MISSOULA COUNTY FOR FISCAL YEAR 2003-2004**

**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 2003-2004, 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; and

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

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

NOW, THEREFORE, BE IT RESOLVED, that the final County Budget for Fiscal Year 2003-2004 be as set out in Attachments A, B, and C, and the same is hereby adopted as the final budget, subject to the conditions set forth below.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the levies as detailed below be fixed and adopted for Fiscal Year 2003-2004, based on the mill value of \$155,527 County-wide, and a value of \$78,235 outside the City limits of Missoula.

<u>MISSOULA COUNTY-WIDE FUNDS</u>	<u>MILLS</u>	<u>ATTACHMENT</u>
General Fund	37.32	A , B, and C
Bridge Fund	4.30	A and C
Poor Fund	4.58	A and C
Fair Fund	0.32	A and C
Museum Fund	2.67	A and C
Extension Fund	1.54	A and C
Weed Fund	2.12	A and C
Planning Fund	3.12	A and C
District Court Fund	3.98	A and C
Mental Health Fund	0.50	A and C
Public Safety Fund	37.93	A and C
Aging Fund	1.16	A and C
Park/Recreation Fund	1.06	A and C
Risk Management	2.36	A and C
Child Daycare	0.29	A and C
Library	9.37	A and C
Technology	2.29	A and C
Judgment Levy	0.81	A and C
SUB-TOTAL	115.72	
<u>MISSOULA COUNTY-WIDE DEBT SERVICE</u>		
Jail Bond	6.50	A and C
Risk Management Bond	0.62	A and C
SUB-TOTAL	7.12	
<u>TOTAL COUNTY-WIDE &amp; DEBT SERVICE LEVIES</u>	<u>122.84</u>	
Road Fund	16.55	A and C
Health Fund	7.76	A and C
Animal Control	1.03	A and C
<u>TOTAL COUNTY-ONLY LEVY</u>	<u>25.34</u>	

DATED THIS 27th DAY OF AUGUST, 2003

Attachments A , B, and C to Resolution 2003-087 are on file in the Clerk and Recorders Office.

- Hearings:   a.   Petition to Vacate an Alley between Main and Marion in Frenchtown  
              b.   Petition to Vacate Marion Street in Frenchtown  
              c.   Petition to Vacate Anjalo Street in Frenchtown

Chairman Carey opened the public hearings.

Greg Robertson presented the staff reports.

- a.   This is a petition to abandon “the alley between Main Street and Marion Street from Ducharme Street to Anjalo Street, located in Frenchtown Townsites in Section 34, Township 15 North, Range 21 West, in Missoula County, Montana.”

The reason for the request is as follows: 1) To enhance the ability of landowners (only one on both sides of alley) to use and enjoy the property.

The following landowners have been notified: Louis Marvin Smith and Deanna D. Smith, Roman Catholic Church, Frenchtown Rural Fire District, Roman Catholic Bishop – Helena, and Theresa A. Shourds.

- b.   This is a petition to abandon “Marion Street from Ducharme Street to Anjalo Street, located in Frenchtown Townsites in Section 34, Township 15 North, Range 21 West, Missoula County, Montana.”

The reason for the request is as follows: 1) To enhance ability of landowners around vacated street to use property.

The following landowners have been notified: Tabish Brothers Distributing Inc., Frenchtown Rural Fire District, Theresa A. Shourds, Montana Rail Link Inc., and Roman Catholic Church.

- c. This is a petition to abandon "Anjalo Street from Main Street to Marion Street, located in Frenchtown Townsites in Section 34, Township 15 North, Range 21 West, Missoula County, Montana."

The reason for the request is as follows: 1) To enhance the ability of landowners around vacated street to use the property.

The following landowners have been notified: Theresa A. Shourds, Roman Catholic Bishop – Helena, Roman Catholic Church and Frenchtown Rural Fire District.

There are no existing improvements on the right-of-ways at this time. In accordance with State statute, the Public Works Director, or his designee, and a County Commissioner must conduct a site inspection. After the site inspection, a report will be given to the Board of County Commissioners and they will make their decision at a future public meeting.

Rosemary Howard stated she represented the Catholic Church through the Diocese of Helena. She wanted to make sure that when Anjalo Street is vacated, the Church receives the vacated portion of the street as part of their property.

Colleen Dowdall stated that is not a decision the Board makes because the County only has an easement across the property. Depending upon how the easement was granted would determine who has what ownership if the vacation is granted. It would be best to consult with a title company or a surveyor to determine what the history of the parcel and easement are.

Rosemary Howard stated that a surveyor has done a review of the Church's property and the Shourds family.

Colleen Dowdall stated that the Board's decision only vacates the right-of-way. It makes the County's interest in the property go away, then it is up to the land owners to determine what their remaining interest are.

Commissioner Curtiss stated that typically, the easement would be over half of the Church's property and half of the Shourds property. The County does not own the right-of-way, they just have an easement across property that exists. If the easement is on the Church's property line, then the easement goes away and the property line remains where it was. Most of the time, an easement runs half and half on a property line.

Commissioner Curtiss asked if there was anyone to explain why these requested were being submitted.

Greg Robertson stated the reason given in the notice was to enhance the ability of landowners to use and enjoy their property.

Colleen Dowdall asked if there was anyone present who had signed the petition. There was no response from the audience.

Chairman Carey recessed the hearing. A site inspection will be scheduled and the Board will make their decision at the next Public Meeting on Wednesday, September 3, 2003.

#### **Hearing: Petition to Establish a Compression Brake Prohibition Zone on Miller Creek Road**

Greg Robertson presented the staff report.

This is a request for action to post a portion of Miller Creek Road as a Compression Brake Prohibition Zone.

Missoula County has received a request from a private citizen to post a segment of Miller Creek Road as a compression brake prohibition zone, citing the constant noise of jake brakes. Additionally, numerous phone calls have been received from citizens in the area requesting the same. An advertisement was placed in the Missoulian for three consecutive weeks advising people of the request and hearing. Should the Board elect to proceed, a resolution has been drafted to this effect and is attached. The area limits are from the City limits near the Miller Creek Road Wye up to the top of the hill near the Miller Creek Gravel Pit, approximately 2.5 miles.

Chairman Carey opened the public hearing.

Commissioner Curtiss stated that part of this road is quite steep for big trucks and asked if some trucks might have to install some kind of muffler for their braking system.

Greg Robertson stated there were three types of braking systems on trucks. One is the Jacobson (Jake) Brake, which use the engine to decelerate and hold the vehicle. That is the noise most people refer to as Jake Brakes. There is also a device called a retarder which works in the transmission, an electronic feature that gears a truck down to a very slow speed. The third system is the standard disk and drum brakes. The use of the retarder is relatively new and is installed in about 20% of the trucks on the road today. In the County's fleet, there are 2 out of more than 50 that have that device. The bulk of trucks used in the Miller Creek area have standard Jacobson Brakes and a back up. Jacobson Brakes are very effective but quite noisy. His concern is that this part of the road has an excessive grade. Based on discussions with truckers, the only thing that will control the speed of a truck on a steep grade is the use of either a retarder or Jacobson Brakes. If this request were in an area where there was not an excessive grade and it was a matter of convenience rather than necessity, he would consider granting the request. However, due to the excessive grade in the area, it would be his recommendation to not approve the request.

Commissioner Curtiss asked if any of the people who signed the petition were notified of this meeting, beyond the notice in the paper.

Greg Robertson stated they were directly contacted.

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

Commissioner Curtiss moved that the Board of County Commissioners deny the request to post a portion of Miller Creek Road as a Compression Brake Prohibition Zone for safety reasons based on the grade of the road and the recommendation from the County Public Works Director. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

**Consideration: Beavertail Point (5 lots) – North Shore of Placid Lake**

Liz Mullins, Office of Planning and Grants, presented the staff report.

Beaver Trail Properties, represented by Dick Ainsworth of PCI, is requesting to subdivide approximately 16 acres into five lots. The lots range in size from 2 acres to 3.89 acres. Staff is recommending approval of the Beavertail Point Subdivision with 14 conditions.

The Board of County Commissioners previously approved the Ponderosa Subdivision for Lease or Rent on this property in June of 1999. The home approved for Lease or Rent is on proposed Lot 1 and an existing home and a trailer are located on proposed Lot 4.

The property is located approximately five miles west of Highway 83, traveling on Placid Lake Road to North Placid Lake Road. All lots are proposed to access off North Placid Lake Road via individual gravel driveways. The property is located along the north side of Placid Lake and the lots are for recreational cabin sites.

The property is unzoned. The Seeley Lake Community Development Guide, developed by the Seeley Lake Community Council in 2002, recommends residential land use in the area around the north shore of the lake, but does not identify specific recommended densities. There is an additional marshy area between the southern boundary of Lot 1 and the Placid Lake shoreline which is not indicated within the project boundary. The marsh area is approximately 2 acres in size and should be included within Lot 1, which is a condition of approval. The proposed density is approximately 1 dwelling unit per 2.6 acres.

Hillsides greater than 25% have been designated as "No Build Zones" and a Hillsides Report is included within the application packet. There is approximately 1,975 feet of lake shore frontage (including the marsh area frontage on Lot 1). A band of riparian vegetation of varying width extends along the shoreline of Placid Lake. The Riparian Resource Inventory and Management Plan for the Ponderosa Subdivision for Lease or Rent is included within the application packet.

Missoula County Shoreline Regulations apply to the property and require permits for work within 20 horizontal feet of the perimeter of the lake, which is defined as the mean annual high water elevation. The marsh is included within the Shoreline Protection Zone. Staff recommends a condition of approval that the "Shoreline and Riparian Resource Protection Zone" labeled on the plat be changed to "Area of Riparian Resource" with additional labeling of "No Improvement Zone" in the marsh area.

Since the area of riparian resource along the shore is also regulated by the Shoreline Regulations, staff is recommending language in Section 27, Areas of Riparian Resource, of the proposed covenants advises lot owners that no construction or improvements in the remaining riparian resource area are allowed except those permitted by and in conformance with the Missoula County Shoreline Regulations. Staff is recommending that the proposed covenants be revised to include language stating that no alteration or removal of riparian vegetation is permitted except for fire prevention, noxious weed control, or in conformance with the Missoula County Shoreline Regulations.

Staff also recommends that a site map of the Area of Riparian Resource be attached to the proposed covenants. Fish, Wildlife and Parks has recommended changes to the Wildlife, Pets and Garbage sections of the covenants to address the special significance of the area, which is a recommended condition of approval.

The Seeley Lake Rural Fire District provides fire protection. On proposed Lot 1, there is a trailer mounted with a 350 gallon tank for fire suppression use. The system can be used to pump water from the lake. The Seeley Lake Rural Fire District had no adverse comments to the proposed subdivision. There is a condition of approval for an RSID/SID waiver statement on the plat for a community water system. Wildland/Residential Interface Standards are addressed in the covenants.

There are 7 variance requests. The first variance request is from a system of pedestrian/bicycle circulation for the subdivision on North Placid Lake Road. OPG recommends approval of the request. The Public Works Department supports the applicant's request for a variance because of its rural nature and the lack of existing facilities with which to connect. Staff recommends a condition of approval that an RSID/SID waiver statement for North Placid Lake Road, including non-motorized facilities, be placed on the plat.

The second variance request is from the requirement that prohibits lot division by an easement. OPG recommends approval of the variance request. Lot 5 is split by an existing easement which currently provides access to the adjacent properties. The Public Works Department does not oppose the variance request.

The third variance request is from the 24 foot road width requirement for North Placid Lake Road, to the existing 22 foot width. OPG recommends approval of the variance request. The Public Works Department stated that the existing road has been in service for many years and supports the variance request. Staff recommends a condition of approval that an RSID/SID waiver statement for future improvements to North Placid Lake Road be placed on the plat.



The fourth variance request is to allow for the maximum road grade to exceed 8 percent for North Placid Lake Road. OPG recommends approval of the variance request. A portion of the North Placid Lake Road has an 11 percent grade. The Public Works Department supports the variance request.

The fifth variance request is from the requirement that all driveways in new subdivisions have a minimum surface width of 12 feet. Originally, staff recommended denial of the driveway width variance. Subsequent to the report issuance, staff received additional agency comment from the Seeley Lake Fire District supporting the variance request for 10 foot driveway surface widths on Lots 1 and 4, with the understanding that all new driveways will meet the minimum 12 foot width. Staff is now recommending approval. Revised motions, conditions and findings of fact are included in the memo dated August 27, 2003.

The sixth variance request is from the required 24 foot paved surface width within a 28-60 foot easement and a maximum of 8 percent road grade for private roads. OPG recommends conditional approval of the variance. A 20 foot easement exists on proposed Lot 5. The driveway within the 20 foot easement is 10 feet wide with an 11 percent grade. The Public Works Department stated that emergency response vehicles require at least a 12 foot width for their safety and maneuverability. Staff recommends that the surface width be widened to 12 feet prior to new construction on Lot 5, subject to review and approval of the Seeley Lake Fire District.

The seventh variance request is from requiring a minimum unobstructed width of not less than 20 feet for any driveway over 150 feet in length. OPG recommends conditional approval of the variance request. The requirement for a minimum unobstructed width of 20 feet permits cars to pass emergency vehicles on driveways that exceed 150 feet in length. If this requirement is met on this property, many trees may need to be removed and additional grading may be necessary. Staff is recommending approval of the variance with a condition that the covenants address periodic turnouts, installing them approximately every 150 feet so they can be located where less trees would be impacted, but turnouts would still be provided where vehicles can safely pass on the long driveways.

Other conditions of approval include:

- A private road maintenance agreement shall appear on the face of the plat.
- Provision for maintenance of the shared private roadway on Lot 5.
- Article III, Section 9, "Montana Noxious Weed Control Act" shall be revised to state "Montana County Weed Control Act."
- A provision advising property owners of the Health Department recommendation that all new construction incorporate passive radon mitigation systems.
- Article IV, Section 4, of the covenants shall state that sections addressing Riparian Resource Management, Weed Management, Wildland/Residential Interface, Fire Protection, Living with Wildlife, Shoreline Protection and Driveway may not be amended without approval of the governing body.

Several letters are included with the application packet, all in favor of the subdivision proposal. A letter from the Seeley Lake Community Council was received and is attached to the staff report.

The memo dated August 27, 2003 includes the revised motions, conditions and findings for recommending approval of the fifth variance request and a change to Condition 6 regarding the road maintenance agreement, to be provided within the covenants instead of a development agreement.

Chairman Carey asked for public comments.

Dick Ainsworth, PCI, developer's representative, thanked Liz and Colleen for their work on this proposal. The property is owned by the Kreitzberg family and has been in their ownership for almost 60 years. They have been excellent stewards of the land. Their intent is not to sell these properties, they want to divide it among the family so each of the brothers would own a parcel and they will continue to share the common facilities on proposed Lot 4, as they have done for over 50 years. They are in agreement with the conditions as revised on the August 27, 2003 memo.

There were no further public comments.

Commissioner Curtiss moved that the Board of County Commissioners **approve** the variance request from Article 3-2(8)(A)(iii) of the Missoula County Subdivision Regulations requiring a system of pedestrian and/or bicycle circulation, based on the findings of fact in the staff report; **approve** the variance request from Article 3-2(3)(B) of the Missoula County Subdivision Regulations requiring North Placid Lake Road to have a minimum surface width of 24 feet, based on the findings of fact in the staff report; **approve** the variance request from Article 3-2(3)(D) of the Missoula County Subdivision Regulations requiring a maximum road grade of 8 percent on North Placid Lake Road, based on the findings of fact in the staff report; **approve** the variance request from Article 3-3(1)(D)(ii) of the Missoula County Subdivision Regulations requiring lots to not be divided by a road easement, based on the findings of fact in the staff report; **approve** the variance request from Article 3-2(1)(I) of the Missoula County Subdivision Regulations requiring all driveways to have a minimum surface width of 12 feet, based on the findings of fact in the staff report and as revised in the memo dated August 27, 2003; **conditionally approve** the variance request from Article 3-2(1)(I) of the Missoula County Subdivision Regulations requiring private roads to have a minimum paved surface width of 24 feet within a 28-60 foot easement and a maximum grade of 8 percent, based on the findings of fact and conditions of approval in the staff report; and **conditionally approve** the variance request from Article 3-2(10)(E) of the Missoula County Subdivision Regulations requiring a minimum unobstructed width of not less than 20 feet for any driveway over 150 feet, based on the findings of fact and conditions of approval in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the Beavertail Point Subdivision, based on the findings of fact and subject to the conditions set forth in the staff report and as amended in the memo dated August 27, 2003. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

**Beavertail Point Subdivision Conditions of Approval:****Plat**

1. The plat shall be revised to show the marsh area within the lotted area of Lot 1, including the vicinity map on the plat and revision to the lotted and total acreage on the plat, subject to review and approval of OPG prior to final plat approval. *Subdivision Regulations Article 5-1(N) and OPG recommendation.*

**Roads**

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

“Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for improvements to North Placid Lake road, including, but not limited to, dust abatement and the installation of pedestrian walkways or bikeways, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land depicted herein.” *Subdivision Regulations Article 3-2(3)(E), County Public Works and OPG recommendation.*

3. The roadway on Lot 5 shall be widened to a 12 foot gravel surface prior to any construction on Lot 5, subject to review and approval by the Seeley Lake Rural Fire District. *Subdivision Regulations Article 3-2(3)(B) and Public Works recommendation.*
4. The proposed covenants shall be amended to state that all driveways have vehicular turnouts approximately every 150 feet and that driveways shall be reviewed and approved by the Seeley Lake Rural Fire District, prior to any new construction. *Subdivision Regulations Article 3-2(10)(E) and OPG recommendation.*

**Private Access Easement**

5. A private road maintenance agreement shall appear on the face of the plat:

“The purchaser and/or owner of Lot 5 understands and agrees that private road construction, maintenance and snow removal shall be the obligation of the owner and that the County of Missoula is in no way obligated to perform such maintenance or upkeep until the roads are brought up to standards and accepted by the County of Missoula for maintenance.” *Subdivision Regulations 5-2(4) and OPG recommendation.*

6. The covenants shall be amended to state that the private road across Lot 5 accesses property outside the subdivision and that at the time of construction on Lot 5, it is the responsibility of the owner of Lot 5 to enter into an agreement for shared maintenance and upkeep of the road with those others who use it to access their land. *Subdivision Regulations Article 3-2(1)(3) and OPG recommendation.*

**Fire**

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

“Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for a community or municipal water system, based on benefit.” *Subdivision Regulations 3-7(2) and OPG recommendation.*

**Riparian**

8. The label on the plat “Shoreline and Riparian Resource Protection Zone” shall be changed to “Area of Riparian Resource.” Additionally, the marsh area on Lot 1 shall be labeled “No Improvement Zone.” *Subdivision Regulations Article 3-13, FWP and OPG recommendation.*
9. Section 27, Areas of Riparian Resources, of the covenants shall be amended to advise lot owners that the marsh area on Lot 1 is a “No Improvements Zone” and that in the remaining riparian resource area no construction or improvements are allowed except those permitted by, and in conformance with, the Missoula County Shoreline Regulations. *Subdivision Regulations Article 3-13, FWP and OPG recommendation.*
10. A map indicating the Area of Riparian Resource shall be attached to the proposed covenants prior to final plat approval. *Subdivision Regulations Article 3-13 and OPG recommendation.*

**Wildlife**

11. Section 27, Areas of Riparian Resource, of the covenants shall be amended to specify that no alteration or removal of riparian vegetation is permitted except for fire prevention, noxious weed control, or in conformance with Missoula County Shoreline Regulations. *Subdivision Regulations Article 3-13 and OPG recommendation.*

The covenants shall be revised to reflect the language changes below. The revised language shall be reviewed and approved by OPG prior to final plat approval.

- Modify sentence 6 of Article III.12 “Garbage” as follows:

All garbage shall be stored in bear-resistant dumpsters or inside trailers or buildings to prevent entrance by pets and bears. Do not let garbage accumulate. Contact Montana Fish, Wildlife and Parks or the garbage collection firm for information on design of bear-resistant dumpsters.

- Insert the following sentences between sentences 1 and 2 of Article III.13 “Animals and Pets”:

Pets must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the immediate control of the owner(s), and shall not be allowed to roam. Dogs and cats are occasionally killed by wildlife such as owls, coyotes, wolves and mountain lions. Under current State law, it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124).

- Modify the first sentence of Article III.26 “Wildlife” to state:

“Flowers, ornamental shrubs, fruit trees and gardens, which may be susceptible to damage from wildlife, shall be protect by fences (in accordance with Article III, Section 8) or consider use of electric fencing.”

The third sentence should probably read:

“Fruit trees shall be harvested promptly so as no to allow ....”

- Add the following items to Article III.26 “Wildlife”:
  - i. Bear-proof and wildlife-proof your cabin when you leave for extended periods. Consider installing sturdy shutters and doors on cabins, sheds and garages.
  - ii. Educate visitors and children about lions, bears and other wildlife. Keep brush cleared from near your house, garage and yard. *Subdivision Regulations Article 4-1(12), 3-13 and FWP recommendation.*

#### Noxious Weeds

12. Article III, Section 9, “Montana Noxious Weed Control Act,” shall be revised to state “Montana County Weed Control Act.” *Subdivision Regulations Article 3-1(2) and Weed District recommendation.*

#### Health

13. The Development Covenant shall include a provision advising property owners of the Health Department recommendation that all new construction incorporate passive radon mitigation systems. The language of the provision shall be subject to review and approval by OPG, prior to final plat approval. *Subdivision Regulations Article 3-1(2) and City-County Health Department recommendation.*

#### Covenants

14. Article IV, Section 4, of the covenants shall state that sections addressing Riparian Resource Management, Weed Management, Wildland/Residential Interface, Fire Protection, Living with Wildlife, Shoreline Protection and Driveways may not be amended without approval of the governing body. *Subdivision Regulations Article 5-1(5)(K)(ix), County Attorney’s Office and OPG recommendation.*

#### **Consideration: Golden West Addition #1, Lot 16 (3 lots on 3.4 acres) – north of Council Way, Mullan Road area**

Tim Worley, Office of Planning and Grants, presented the staff report.

This is a proposal by John Freer, represented by Ron Ewart of Eli & Associates, to divide a 3.4 acre parcel into 3 lots, ranging in size from 1.05 acres to 1.3 acres. This property is located near Kelly Island, between Hayes Drive and Douglas Drive and north of Council Way. It is inside Missoula’s Urban Growth Area and will eventually be served by the Mullan Sewer project.

The property is located at a break in slope. Some area on the property exceed 10% slope but there are no areas on the property in excess of 25% slope. The zoning for this property is C-RR1 with a recommended density of one dwelling unit per acre. The Comprehensive Plan in this area recommends a density of two dwelling units per acre. The proposal is in compliance with both zoning and the Comprehensive Plan.

The lot is currently fronted by Hayes Drive, Douglas Drive and Council Way, which are all paved County roads within 60 foot right-of-ways. The widths of these paved road are less than County standards. Douglas Drive and Hayes Drive are cul-de-sac roads along the west and east sides of the subdivision.

There are three variance requests. The first is from the paved width standard for all three County roads. The second is from the requirement for boulevard sidewalks along one side of each road. The third is from hillside density reduction that relates to Article 3-15 in the Subdivision Regulations.

Staff recommends approval of two of the variance requests and recommends approval of the walkway variance request conditionally. Staff feels the paved width of the three County roads is sufficient considering the proposal amounts to essentially one lot per road. Since Council Way will be torn up during the Mullan Sewer project, staff feels that a walkway should not currently be required. Hayes Drive, the cul-de-sac road west of the proposal, doesn’t have connectivity to the north and is not expected to be much affected in a direct sense by future subdivision. Therefore, staff feels a walkway is not required along the western part of the subdivision. Douglas Drive along the eastern part of the subdivision is an area where a walkway is proposed along the east side. This project began with Glacier Estates and continued with other subdivisions in the area, Kelly Island Estates and Valley Estates. Eventually a walkway will be constructed along the eastern side of Douglas Drive and staff is recommending this subdivider contribute money to the walkway fund. This is a modification of Public Works recommendation.

There are seven conditions of approval:

1. Existing driveway to be moved 125 feet from the centerline of Council Way.
2. Approved turnarounds for driveways 150 feet or more in length.
3. Developer to donate \$230 per lot for Flynn Lane/Mullan Road signalization; \$815 total to fund improvements to the Mullan Road/Reserve Street intersection.
4. Contribution to walkway fund for east side of Douglas Drive.
5. Applicant to petition into Missoula Urban Transportation District.
6. Review of water supply for firefighting – sprinklers or water storage – reviewed by Missoula Rural Fire District.
7. Amendment to wildlife section of Development Agreement – wording addresses concerns typical of Kelly Island area.

Staff recommends approval of the Golden West Addition #1, Lot 16, Subdivision.

Chairman Carey asked for public comments.

Ron Ewart, Eli & Associates, developer's representative, thanked Tim for his work on the proposal. There is basically agreement with the conditions but he would like to discuss a few of them. First is Condition 3 regarding the impact fees. They have done other subdivisions in the area and this is the first time the fees have been imposed. It is probably needed, but it would have been nice if he could have told the client up front that these were being required. That amounts to \$1,505; \$230 per lot and an \$815 is a lump sum fee, not per lot.

Tim Worley stated he thought it was a lump sum.

Ron Ewart stated the improvements would probably be a new road back about 500 feet from Flynn Lane. On Condition 4 it requires a proportionate amount toward installation of the walkway on Douglas Drive. On the other side of the road, the three Valley Estates subdivisions paid \$2,000 each. He hoped there could be agreement on a similar \$2,000 amount for this proposal. The developer would be looking at a total of approximately \$3,500 to be given to the County for various improvements. In the submittal, he mentioned that he hoped that some of the money might go toward the pedestrian connection at the end of Douglas Drive across the bottom of Lot 1 of COS 5192 as the County has a two year option on that right-of-way. He would request that the amount of the contribution to the sidewalk fund noted in Condition 3 be capped at \$2,000. When he first started working on this proposal, he heard from a neighbor that folks did not believe these lots could be divided because of the existing covenants. When Mr. Freer presented his idea, the covenants were carefully reviewed. They state that there can only be one home per lot. A lot means any plot of land shown on any recorded subdivision map of the property. When this subdivision is filed, it will be a recorded subdivision and there will only be one home per lot. He felt the reason for the language in the covenants might have been to avoid having two homes on one lot, where one of the homes would be a rental. He has read a lot of covenants and the ones that do not allow a lot to be re-subdivided state that very plainly. The County is not party to covenants but they are a legal instrument enforceable by law. He always makes sure he is abiding by the covenants before he begins any project. He would never enter into a subdivision proposal that went against the covenants. The sewer will be coming down Council Way and they are making a determination if it would be feasible to wait for it or perhaps build one home now with a septic until the sewer is available.

Lois Covault stated she was the Secretary of the Golden West Subdivision Homeowners Association. She felt it was her job to protect their covenants. She just heard about the posting for this subdivision last weekend and was upset at the placement of the sign. It wasn't in an area where it could be seen easily by anyone in the Golden West Subdivision. This proposal is adjacent to a hill which has limited site distance. Tim informed her that the posting was a courtesy as this was a minor subdivision. She asked if the letter she sent regarding the proposal and how they view the covenants was included in the application packet.

Commissioner Curtiss stated it was included.

Lois Covault stated that many of these recently approved subdivisions seemed to be done under the radar, such as Kelly Island, Glacier Estates and the three Valley Estates that are subdividing their back yards. Those people are uncomfortable with a road going past their houses to connect to Mullan Road. Traffic is increasing all the time in this area. There must be another outlet to Mullan Road. There is only one way out. Speed is another problem on these streets. She is also appalled that this developer would even think about putting in a septic system with the sewer being so close. Golden West has been accused of polluting the aquifer. There are laws which can dictate what someone can or cannot do with their property. The collective group of Golden West homeowners decided years ago to have covenants which were written in 1975 language. Now, others want to interpret them differently. People in Golden West interpret them to mean one house per lot and a lot is defined as a plot in that subdivision map. The County can't enforce covenants but they can honor them, especially when the people under the covenants want them honored in a specific way. She presented a petition with 32 signatures that represents 22 of the lots within the subdivision and some of the neighboring lots which would be affected by the increased traffic, etc. The Wye/Mullan planning process has been in the works for a number of years and it is still not completed. Some of the points that have developed during that process include "encouraging residential land use pattern which provides a high quality of living environment in a variety of residential settings, protects public health and safety, etc.," "respect the different elements of neighborhood patterns and integrate them so as to form a functional, aesthetically pleasing and livable whole," and "preserve the diversity, integrity and unique values of neighborhoods, communities and rural areas." Golden West feels they have a unique neighborhood and they want to keep it that way. Children can be in 4-H and keep animals; there is not enough room on a one acre tract to keep animals. If this split is allowed, others may follow. A new trail is being installed on Cote Lane. There is a lot of wildlife in the area. The water quality and quantity need to be protected. Allow the Wye/Mullan planning process a chance to proceed. The County should look out for the whole of the area, a majority of the residents are protesting that this lot is being divided. People bought their homes and lots in good faith that the covenants mean something. This subdivider wants the County to violate their covenants and grant variances to the regulations. They would request that the County puts the brakes on this inappropriate subdivision.

Steve Hock stated he was an attorney representing the applicant, Mr. Freer, and the owners, Mr. and Mrs. Bardant. Most of Mrs. Covault's comments have been addressed in the Request for Commission Action. The whole issue of the covenants is a private contract between the various people who live in the subdivision. That contract is something that is routinely addressed, interpreted and enforced in the courts. Even if the Board was inclined to consider the issue of covenants, this is a clear case of covenants that expressly permit further subdivision. One provision says that a person can have only one dwelling place per lot. There is a definition of "lot" that says: "Lot shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties with the exception of ...." Properties is defined as all of the property within the map as originally filed by Golden West and any additional properties later added. The definition of a lot does not mean a lot as shown on the original plat filed by Golden West. It says any lot shown on any subdivision map. That is a clear indication of the intent to allow further subdivision. Again, this is a private matter that should appropriately be handled through the courts.

Steve Lorantz, 1600 Hayes Drive, stated that the Golden West subdivision is at the interface of Missoula's westward residential development. It consists of lots that are about 3 acres each. What is not at issue is whether or not any subdivision is permitted at any time but whether or not this particular proposed subdivision is acceptable to those who already live there. The language of the covenants says any lot on any recorded subdivision. This subdivision has not been recorded yet so it is not in existence. The Homeowners Association is examining updating and amending the covenants in light of current pressures on the neighborhood. There is a lot of development just east of Douglas Drive. There is no emergency access to Mullan Road which will put more traffic pressure on the area. This proposal is essentially covenant-busting. This is an outside interest driving the character of the neighborhood. This is not what the residents want to see happening. This subdivision was done without consultation to the Homeowners Association. It thumbs its nose at the residents and invalidates the covenants. This is changing the very nature of Golden West, which the residents are not ready for right now. They would like to have some further discussions to see what this will mean for the character of the neighborhood which could help in updating the covenants to reflect the interests of the whole. He is not opposed to the inevitable subdivision of the area, but this project is covenant-busting to the Golden West homeowners.

Lisa Arens, 1540 Hayes Drive, stated she and her husband bought their property in June of 2000. They were attracted to the area because of its uniqueness with 3 acre to 5 acre tracts, a more rural way of living. It cost more but they wanted this quality of life. She and her husband are opposed to this subdivision, it will destroy the whole subdivision. The covenants state that a "lot shall mean and refer to any plot of land shown upon any recorded subdivision map." The subdivision was recorded in 1975, so her understanding was those 3 acre to 5 acre parcels filed at that time. Twenty-one homes have been developed below her property and that traffic has been added to Cote Lane. She rides her horse in the area and is opposed to sidewalks, she would like to see more trails. She does not want to see more houses being built so close together. If she did, she would have stayed at 4th and Russell.

Steve Hock stated there would be a subdivision map pursuant to the existing zoning regulations on file which is consistent with the covenants.

Jerry Covault, 7850 Stegner Drive, spoke at great length about the reasons he felt this was an inappropriate subdivision in the Golden West area. He discussed each of the variances and conditions point by point as to the reasons why he felt this subdivision should be rejected. He also discussed the interpretation of the covenants. He felt the decision the Board made had wide ranging implication to the area and Missoula County. He urged the Board to deny the subdivision.

Lisa Arens stated that when she and her husband read the covenants when they bought the property, they interpreted them to apply to the map included with the covenants. She understood them to state that unless a majority of the Golden West homeowners wanted them changed, they could not be changed and they would be safe from division of the tracts. The covenants were part of the reason she purchased a home in Golden West. She hoped the Board would vote no on this subdivision.

Chairman Carey stated that the Board relies on the Deputy County Attorney for legal advice.

Steve Hock stated that contrary to Mr. Covault's assertion, he was not consulted in any way about this subdivision until the Homeowners Association wrote a letter that purported the covenants as prohibiting subdivision.

Commissioner Curtiss asked Greg to comment about the slope of the land and constructing a road with an 8% grade.

Greg Robertson stated that quite a bit of earth work would need to be done to get to an 8% grade. It is not uncommon to see driveways at 10% to 12% grade because they serve a single residence and they are private. There will have to be quite a bit of work done to get a reasonable grade.

Commissioner Curtiss stated when variances are allowed, a condition is usually required that each owner waive their right to protest an RSID/SID for future improvements or money is contributed to a fund to install the improvements when appropriate. Connection to the sewer when it is available is also required. She asked Colleen if the map that was filed with the original covenants changed any interpretation of the covenants.

Colleen Dowdall stated that the definition of a lot did not matter. Even if it did, the covenants are a private matter subject to the enforcement between the parties covered by them. The covenants don't have any bearing on whether or not the Board can approve a subdivision. The Commissioners are not bound by the covenants and they must consider the rights of the applicant under the law. If the Board approves the subdivision and the neighbors are successful in convincing a court that the covenants mean no new subdivisions, then they could be successful in preventing the subdivision from being filed.

Chairman Carey stated that Colleen's advice has consistently been that the Board has no legal basis for denying the subdivision with regard to covenants.

Colleen Dowdall stated the County would be subject to liability in the event the Board used that as a reason for denying the subdivision. The developer could be successful in asking a court to force the County to change that decision because the covenants do not apply to the Board's decision.

Commissioner Curtiss stated that a comment was made that equipment used for an adjoining subdivision has caused damage to the road. Would that damage be covered in an improvement bond.

Colleen Dowdall stated that typically road damage caused by construction equipment is not included in an improvement bond. It was not anticipated that the equipment would use this road. Greg could speak with the developer about providing some security or repair after the subdivision is completed.

Commissioner Curtiss stated that a variance has been requested to the hillside regulations to allow three lots.

Colleen Dowdall stated that the Board would have to look at what was trying to be protected with the hillside regulations to determine if the variance is appropriate.

Chairman Carey stated that the findings state there would be a hardship to the owner if the variance was not granted.

Colleen Dowdall stated that when work was done on the hillside regulations, it was not anticipated they would apply to small subdivisions, it was aimed more at areas like the South Hills or the North Hills, to protect views and prevent steep drives for air quality reasons.

Chairman Carey asked if there was a potential takings argument if the variance was not granted.

Colleen Dowdall stated the challenge would be if the regulation has any basis to accomplish its goals in this case.

Commissioner Curtiss stated the drives would be steep.

Colleen Dowdall stated that in the hillside regulations, the goal was to try and prevent steep drives like Gharrett which would require more sanding and contribute to air pollution. In this case, the County won't be sanding these individual private driveways. It would be hard to tie the reasons for the regulations to this particular subdivision.

Chairman Carey asked Greg about the lack of sufficient site distance.

Greg Robertson stated there are minimum standards for driveway locations in the Subdivision Regulations and there are also nationally accepted standards. That is one reason they commented on moving one of the driveways, which would provide adequate separation.

Chairman Carey stated that a comment was made about drainfields being located in sand lenses.

Greg Robertson stated that the strata in the area is clay with sand lenses. That is part of the reason why the El Mar and Golden West lagoon systems don't operate properly and why the Mullan Sewer project was undertaken in the first place.

Chairman Carey stated that the question was raised as to what would happen if a drainfield was located in a sand lens.

Greg Robertson stated that was an issue for the Health Department. Sewer will be available to these lots. The lift station by Kelly Island will be started within the next few weeks and the segment in front of this property should begin by May or before.

Commissioner Curtiss stated that since this area has been identified as needing sewer, can they require the developer to wait until the sewer has been installed before they build any houses.

Colleen Dowdall stated that she did not believe the Board could do that. The Health Department regulations will govern that and there are special rules for areas that are going to receive sewer. The Health Department's comment refer to those special rules and this subdivision will be required to connect to sewer when it is available. That is not within the Board's purview.

Commissioner Curtiss asked if they could connect to Golden West's system.

Greg Robertson stated they could not connect to the Golden West system. The new sewer will be much closer.

Lisa Arens stated that the County Commissioners are not bound by the covenants, but Greg is with the driveways.

Greg Robertson stated the Subdivision Regulations governs placement of approaches to public roads, it has nothing to do with the covenants.

Lisa Arens stated the sewer connection for Golden West was on the other side of Hayes Drive.

Greg Robertson stated that would be up to the Health Department to decide if that was appropriate or not.

Commissioner Curtiss stated there were no variances to the 8% grade regulation.

Colleen Dowdall stated the driveways, which are private, could have grades in excess of 8%.

Commissioner Curtiss asked if an exact amount was set for the sidewalk fund for Valley Estates.

Greg Robertson stated he was not aware of any exact amount.

Colleen Dowdall stated the condition of approval for Valley Estates did not specify a certain amount. An estimated value may have been included in a letter from Public Works, but it was not specified in the conditions. She would like to recalculate the cost to include the \$5,000 for the purchase of the additional easement and divide it among the Valley Estates and this subdivision so that easement can be purchased.

There were no further public comments.

Commissioner Curtiss stated the Board was faced with the situation where a Homeowners Association believes their covenants protect them. The Board is not allowed to enforce covenants. It takes a court to decide who is right with regard to the interpretation of the covenants. The Board must look at the subdivision to make sure it meets the Subdivision Regulations. Variance can be granted if requirements are included so that what is being varied from will be done in the future if it is needed.

Chairman Carey stated that the Board is not a court of law nor are they law makers. The legislators in Helena make the laws and set what guidelines the Board may work under. Findings of fact based on the law need to be made in order to

deny a subdivision. This isn't the first time the Board has had to act on a subdivision that is unpopular. A person who owns a piece of property has the right to subdivide it under the law as long as they follow the regulations in place. The Board cannot deny the proposal because they don't like it. The rules are made elsewhere for the Board to administer.

Colleen Dowdall stated that according to State law the applicant has the right to appeal within 30 days if the Board makes a decision that is adverse to their interests. At that point, a court would make the decision based solely on the law and the regulations. Laws in Montana favor the rights of private property owners. County government is very limited and has very few powers, only those granted to it by the State and the Legislature is not getting any more generous when it comes to land use.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Article 3-2(3) of the Missoula County Subdivision Regulations requiring a 26 foot paved width for Douglas Drive, Hayes Drive and Council Way, based on the findings of fact in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners conditionally approve the variance request from Article 3-2(8)(A)(ii) of the Missoula County Subdivision Regulations requiring boulevard sidewalks or walkways on Douglas Drive, Hayes Drive and Council Way, based on the findings of fact in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Article 3-12(2) of the Missoula County Subdivision Regulations requiring a hillside density reduction, based on the findings of fact in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the Golden West Addition #1, Lot 16 Summary 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.

Jerry Covault asked why he or his wife should attend one more meeting of the Wye/Mullan planning and put in thought, effort and hard work.

Commissioner Curtiss stated that through that process it will define what the area will look like. The only way to limit development is by zoning. Once the neighborhood identifies what they want, the residents can request zoning. If the zoning request is approved, then the Board cannot override it.

Jerry Covault asked if there were any area in the County that were zoned that way.

Commissioner Curtiss stated there were many areas that were zoned that way and that zoning holds up in court, it is much stronger than covenants.

#### **Golden West Addition #1, Lot 16 Summary Subdivision Conditions of Approval:**

##### **Roads and Driveways**

1. The existing driveway accessing Lot 16C shall be moved to at least 125 feet from the centerline of Council Way. Final plans for driveway access for Lot 16C shall be reviewed and approved by County Public Works prior to final plat approval. *Subdivision Regulations Article 3-2(13) and Public Works recommendation.*
2. Driveways in excess of 150 feet in length shall have approved turnarounds for fire apparatus within 150 feet of the building and shall have an unobstructed width not less than 20 feet and an unobstructed vertical clearance of 13 feet, six inches, and final designs shall be approved by the Missoula Rural Fire District. *Subdivision Regulations Article 3-2(10)(E), Missoula Rural Fire District and OPG recommendation.*
3. The developer shall contribute \$230 per lot to the Mullan Road transportation system fund for signalizing the Flynn Lane/Mullan Road intersection and \$815 to the fund for improving the Reserve Street/Mullan Road intersection. Payment of this contribution shall be verified prior to final plat approval. *Subdivision Regulations Article 4-1(12) and Public Works recommendation.*

##### **Pedestrian Facilities**

4. The Developer shall contribute a proportionate amount towards the cost of the installation of a paved boulevard walkway along the east side of Douglas Drive in an amount to be determined by the Missoula County Public Works Director, prior to final plat approval. This amount shall be kept in an account with Missoula County and shall be used for construction of these improvements. *Subdivision Regulations Article 3-2(8)(A)(ii) and Public Works recommendation.*

##### **Urban Transportation District**

5. The applicant shall petition into the Missoula Urban Transportation District prior to final plat approval. *Subdivision Regulations Article 3-1(1) and MUTD recommendation.*

##### **Fire**

6. Final plans for water supply for fire protection purposes shall be reviewed and approved by the Missoula Rural Fire District. If residential sprinkler systems are recommended, the systems shall be reviewed and approved by the Missoula Rural Fire District prior to issuance of a zoning compliance permit for each home. The recommended plans shall be included in a Development Agreement to be filed with the Clerk and Recorder, subject to review and approval by OPG and the County Attorney's Office prior to final plat approval. *Subdivision Regulations Article 3-7(1) and OPG recommendation.*



**Development Agreement**

7. Section 2 of the Development Agreement shall be amended to include restrictions recommended by the Montana Department of Fish, Wildlife and Parks as follows:

**2. Wildlife**

Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, bears, mountain lions, wolves, skunks and raccoons. Contact the Montana Department of Fish, Wildlife and Parks Office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife." The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- a. There is the potential for **vegetation damage by wildlife, particularly from deer** feeding on lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be aware of this potential damage. They should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Homeowners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
  - b. **Do not feed wildlife** or offer supplements (such as salt blocks), attractants or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against State law (MCA 87-3-130) to provide supplemental feed attractants if it results in a "concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners should be aware that deer might occasionally attract mountain lions to the area.
  - c. **Pets** must be confined to the house, in a fenced yard or in an outdoor kennel area, and not be allowed to roam, as they can chase and kill big game and small birds and mammals. Under current State law, it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124).
  - d. **Garbage** should be stored in secure bear-resistant containers or indoors to avoid attracting animals such as bears, raccoons, dogs, etc.
  - e. **Pet food and livestock feed** should be stored indoors or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, etc. When feeding pets or livestock, do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
  - f. **Barbecue grills** should be stored indoors. Food spills and smells on the grill, lid, etc., can attract bears and other wildlife.
  - g. Consider **boundary fencing** that is no higher than 3.5 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence.
  - h. **Gardens** can attract wildlife. Keep the produce picked because rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
  - i. **Fruit trees or orchards** can attract wildlife such as deer and bears. Keep ripe fruit picked and do not allow rotten fruit to collect under trees. Consider fencing to keep deer out.
  - j. **Bird feeders** attract bears. Consider not using them in this area between the months of April through October. Even if they could be strung high enough off the ground such that bears could not reach them, the feeding action of birds scatters the seed to the ground below, which attracts bears.
  - k. **Compost piles** can attract skunks and bears and should be avoided in this subdivision. *Montana Department of Fish, Wildlife and Parks recommendation.*
8. The Development Agreement shall include a provision advising property owners of the Health Department recommendation that all new construction incorporate passive radon mitigation systems and the prohibition of the installation of wood burning stoves or fireplaces. The language of the provision shall be subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations 3-1(2) and City-County Health Department recommendation.*
9. The Development Agreement shall include plans for address signs for each property, to be reviewed and approved by the Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-2(2)(G) and Missoula Rural Fire District recommendation.*

**Consideration: Kittrell Subdivision (2 lots) – east of Seeley Lake near Airport**

Tim Worley, Office of Planning and Grants, presented the staff report.

This is a proposal by Debra Kittrell, represented by Becky Weaver of PCI, to divide a 7.32 acre parcel into two lots, 1.5 acres and 5.82 acres in size respectively. The property is located east of Seeley Lake on Airport Road, about 1 mile east of the junction with Montana Highway 83.



The slopes on the property vary from being level to in excess of 25 percent. The areas in excess of 25% have been shown as a "No Build Zone" on the plat, which is a slope break outside of any proposed development area associated with this subdivision. There are no steep slopes on the 1.5 acre lot that makes up the western portion of the parcel. There is some undulation of the topography with two wet area. One wet area is on proposed Lot 1 and the other is on proposed Lot 2. The wet areas are shown on the plat as riparian areas with 25 foot buffers. Both the buffers and the riparian area have been shown as "No Improvement Zones" on the plat.

This parcel is unzoned. In this location, the 1989 Seeley Comprehensive Plan amendment does apply. The amendment doesn't specify activities or density, but in review, this proposal was found to be in general compliance with goals of the 1989 Seeley Comprehensive Plan.

Airport Road provides access to the location. It is a paved road approximately 22 feet wide. A driveway serves the current dwelling on the eastern portion of the property. The driveway is in excess of 150 feet but it does have adequate turnaround area. The smaller lot on the western portion of the property is not yet developed, but when it is developed, Public Works will require an approach permit for that driveway.

There are two variances requests; one is from the County standard for a 24 foot wide paved road on Airport Road and the other is from the pedestrian facilities requirement along Airport Road. Staff recommends approval of both variance requests. Staff felt a two lot subdivision did not warrant improvements to Airport Road to the 24 foot wide paved standard. A walkway would be a good idea but it was deemed that the cost to construct it along a lot that has in excess of 1,000 feet of frontage would be cost prohibitive. The plat does include the waiver of the right to protest an RSID/SID for such improvements if they are needed in the future.

Staff is recommending five conditions of approval:

1. Revision of the RSID/SID statement that conforms with regulations.
2. Replacement of wildlife language in the Development Covenant.
3. Area of Riparian Resource Map to be attached to the riparian management plan.
4. Language in the development covenant regarding driveways greater than 150 feet in length.
5. Language in the development covenant advising property owners of Health Department recommendation about radon mitigation.

In conclusions, staff recommends approval of the Kittrell Subdivision.

Chairman Carey asked for public comments.

Becky Weaver, PCI, developer's representative, thanked Tim for his work on the proposal. They are in agreement with the conditions as presented.

There were no further public comments.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Article 3-2(3)(B) of the Missoula County Subdivision Regulations which requires a 24 foot paved width for Airport Road, based on the findings of fact in the staff report, and approve the variance request from Article 3-2(8)(A)(iii) of the Missoula County Subdivision Regulations which requires pedestrian facilities in subdivision outside the Urban Growth Area served by public roads, based on the findings of fact in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the Kittrell Summary Subdivision, based on the findings of fact in the staff report and subject to the recommended conditions of approval. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

#### **Kittrell Summary Subdivision Conditions of Approval:**

1. The waiver of the right to protest an RSID/SID for improvements to Airport Road shall be revised to state the following:  
  
"Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future RSID/SID, based on benefit, for upgrading the streets within the subdivision, including, but not limited to, paving, curbs and gutters, non-motorized facilities, street widening and drainage facilities. *Subdivision Regulations Article 3-2(3)(E) and OPG recommendation.*
2. Sections A through G and H of the Development Covenant shall be replaced with the following language (**NOTE: New wording is underlined and strikethrough is used for deletions**):

#### **DEVELOPMENT COVENANT**

- A. Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets and properly storing garbage, pet food, livestock feed or other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, bears, mountain lions, wolves, skunks and raccoons. Contact the Montana Department of Fish, Wildlife and Parks Office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife."

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- A-1. Pets shall be fed indoors and pet food shall be stored indoors in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, etc.
- B-2. All portable barbecues shall be cleaned regularly and stored indoors when not in use. Food spills and smells on the grill, lid, etc., can attract bears and other wildlife.
- C-3. The planting of native vegetation is encouraged because it is less likely to suffer extensive feeding damage by deer and other wildlife. Otherwise, owners should be prepared to protect their vegetation (fencing, netting, repellents) in order to avoid problems.
- D-4. Gardens can attract wildlife. Keep the produce picked because rotting vegetable material can attract bears and skunks. Netting over gardens can help deter birds from eating berries. All-garden fencing shall ~~should~~ be at least eight feet high and one foot below the soil to prohibit animal intrusion. ~~Using~~ a solid top rail ~~on all fencing~~ made of something other than wire ~~to~~ can help avoid animal entanglement.
- E-5. Apiaries should be avoided. Prior to their placement on a lot, the Montana Department of Fish, Wildlife and Parks should be contacted to discuss how to best avoid wildlife conflicts.
- F-6. Compost piles can attract skunks and bears and shall be enclosed or kept indoors.
- G-7. The brochure, "Living with Wildlife" shall be distributed to all lot owners.
- 8. Do not feed wildlife or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against State law (MCA 87-3-130) to provide supplemental feed attractants if it results in a "concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners should be aware that deer might occasionally attract mountain lions to the area.
- 9. Pets shall be confined to the house, in a fenced yard or in an outdoor kennel area, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current State law, it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124).
- 10. Garbage should be stored in secure animal-resistant containers or indoors to avoid attracting animals such as bears, raccoons, dogs, etc.
- 11. Consider boundary fencing that is no higher than 3.5 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence.

(... continue with item H [re-lettered] onward in the Covenants). Montana Department of Fish, Wildlife and Parks recommendation.

- 3. A site map of the Area of Riparian Resource shall be attached to the Riparian Management Plan, subject to review and approval of OPG prior to final plat approval. *Subdivision Regulations Article 5-3(5)(F) and OPG recommendation.*
- 4. The Development Covenant shall be amended to include a provision advising property owners that driveways in excess of 150 feet in length shall have approved turnarounds for fire apparatus within 150 feet of the building and shall have an unobstructed width of not less than 20 feet and an unobstructed vertical clearance of 13 feet six inches and that final designs shall be approved by the Seeley Lake Rural Fire District. *Subdivision Regulations Article 3-2(10)(E) and OPG recommendation.*
- 5. The Development Covenant shall be amended to include a provision advising property owners of the Health Department recommendation that all new construction incorporate passive radon mitigation systems. The language of the provision shall be subject to review and approval by OPG prior to final plat approval. *City-County Health Department recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 3:40 p.m.

**THURSDAY, AUGUST 28, 2003**

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

#### ADMINISTRATIVE MEETING

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

Request for Action – The Commissioners signed TSEP project start-up documents for the Mullan Corridor Sewer Project. These documents are required to commit funds which Missoula County has received for a TSEP grant to assist with the connection of four subdivisions to the backbone system currently under construction. The documents were returned to Greg Robertson, Public Works Director, for further handling.

Agreement – Chairman Carey signed a Construction Agreement, dated June 19, 2003, between the Missoula County Airport Industrial District and the Missoula Electric Cooperative ("MEC") to install a main breaker for single phase 200 amp service at the LaLonde Ranch, Missoula Development Park. The estimated cost for this project is \$300.00.

MEC will coordinate their work with Fister Electric (see entry below), who will install the service line. The document was returned to Barb Martens in the Projects Office for further handling.

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Fister Electric to upgrade the electrical service at LaLonde Ranch, Missoula Development Park. The cost for the upgrade is \$4,253.00. Fister will coordinate their work with the Missoula Electric Cooperative who will install the main breaker. All other terms and conditions are set forth therein.

Agreement – The Commissioners signed a Mutual Assistance Agreement, dated August 28, 2003, between the Missoula County Sheriff's Office and the Missoula City Police Department for the provision of mutual assistance to one another in cases of extraordinary public safety need, as authorized by the mutual assistance statutes of the State of Montana set forth in Title 44, Chapter 11, MCA. All terms and conditions are set forth therein. The document was forwarded to Bob Reid at the City Police Department for further signatures.

Agreement – The Commissioners signed a Memorandum of Agreement between Missoula County and the Missoula Art Museum for the continued provision of the Art Museum in Missoula County. The total amount shall not exceed \$138,575.00. The term will be July 1, 2003 through June 30, 2004. The document was returned to Jenifer Blumberg in the Office of Planning and Grants for further signatures and handling.

Extension Request – Per recommendation of the Office of Planning and Grants staff, the Commissioners approved and signed a letter, dated August 28, 2003 to Mike Dwyer, Florence, Montana, approving his request for a one year extension of the final plat approval deadline for the Dwyer Addition Subdivision. The new deadline will be September 3, 2004.

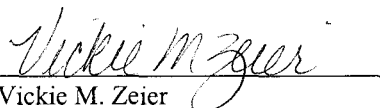
Other items included:

- 1) A discussion was held on a request to construct and operate an insectaria or "bug corral" on Missoula County land (Big Sky Park), for the purpose of reducing Knapweed. The Commissioners authorized the request, contingent on approval of the Big Sky Stewardship and the Missoula County Park Board.

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

FRIDAY, AUGUST 29, 2003

The Board of County Commissioners did not meet in regular session. Commissioners Carey and Curtiss were out of the office all day.

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

MONDAY, SEPTEMBER 1, 2003

THE COURTHOUSE WAS CLOSED FOR THE LABOR DAY HOLIDAY.

TUESDAY, SEPTEMBER 2, 2003

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was on vacation from September 2<sup>nd</sup> through the 5<sup>th</sup>.

Site Inspection

In the forenoon, Commissioner Carey accompanied Chuck Wright, Assistant Public Works Director, on a site inspection of two streets and an alley in Frenchtown for the requests that they be vacated.

Claims Lists -- Commissioners Carey and Curtiss signed two (2) Claims Lists, dated August 28, 2003, with the following grand totals:

- 1) \$3,562.66; and
- 2) \$20,520.20.

The Claims Lists were returned to the Accounting Department.

Claims List -- Commissioners Carey and Curtiss signed the Claims List, dated September 2, 2003, with a grand total of \$34,643.75. The Claims List was returned to the Accounting Department.

Monthly Report -- Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending August 31, 2003.

ADMINISTRATIVE MEETING

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

Contract -- The Commissioners signed an annual Professional Services Contract between Missoula County and the Chem-Safe Environmental, Inc. for the collection, bulking, transportation and disposal services of household hazardous waste. The total compensation depends upon the amount collected and removed, as set forth therein. All other terms and conditions are set forth therein. The document was returned to the Health Department for further signatures and handling.

Agreement -- The Commissioners signed one (1) Sanitary Sewer Grant Program Agreement for Partial Assistance to Owner-Occupied Households Secured by Real Property, dated May 28<sup>th</sup>, 2003, with Edith L. Kolppa, 303 Minnesota Avenue, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. All sewer development fees and on-site connection costs and fees are as set forth therein.

Contract -- The Commissioners signed a Professional Services Contract between Missoula County and Western Door Co. for the automation of two inside doors on the first floor of the Health Department. The total compensation shall not exceed \$10,000. The term will be September 2, 2003 through October 2, 2003.

Amendment -- The Commissioners signed an Amendment, dated May 1, 2003, to the Memorandum of Agreement between Missoula County and The Salvation Army, dated April 1, 2003, amending the funding award period for the implementation of a HUD Continuum of Care Grant, in the amount of \$187,737. The funding award period is changed to May 8, 2003 through May 7, 2006 (from April 1, 2003 through March 31, 2006).

Lease Agreements -- The Commissioners signed two (2) extension Lease Agreements, dated September 2, 2003, between Missoula County and the Frenchtown Rural Fire District ("FRFD") for the operation and maintenance of a fire station on the 1) Ponda Rosa Acres Park; and 2) Piney Meadows Park in Frenchtown, for a period of ten years, at the rental fee of \$1.00 per year per park. These leases require that the FRFD control noxious weeds on the leased land and maintain public access to the park property.

Signature Page -- The Commissioners reviewed and signed one (1) Claims Signature Page for the Larchmont Golf Course Accounts Payable Invoice Register dated September 2, 2003, in the amount of \$23,855.61. The Signature Page was returned to the County Auditor.

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

WEDNESDAY, SEPTEMBER 3, 2003

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

Claims Lists -- Commissioners Carey and Curtiss signed three (3) Claims Lists, dated September 2, 2003, with the following grand totals:

- 1) \$11,843.42;
- 2) \$12,007.73; and
- 3) \$1,157.41.

The Claims Lists were returned to the Accounting Department.

Claims List -- Commissioners Carey and Curtiss signed the Claims List, dated September 3, 2003, with a grand total of \$319,593.76. The Claims List was returned to the Accounting Department.

Monthly Report – Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending August 31, 2003.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

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

Agreement – Chairman Carey signed an Agreement between Missoula County and the Montana Department of Environmental Quality (“DEQ”) (DEQ Agreement No. 504011) for the purpose of inspecting and testing small Public Water Supply Systems to ensure that public health and safety is protected. The services must be completed by June 30, 2004. DEQ agrees to pay the County up to a maximum of \$15,000.00 for SFY 2004. All other terms and conditions are set forth therein. The document was returned to the Health Department for further handling.

Contract – Chairman Carey signed Contract #04-07-5-31-006-0 between the Montana Department of Public Health and Human Services (“DPHHS”) and the Missoula City-County Health Department, as statewide THCCM (Transitioning Healthy Child Care Montana) Coordinator. The Health Department will carry out the work plan approved the Maternal and Child Health Bureau of the U.S. DPHHS for utilizing the funding authorized for a Community Integrated Service System. The term will be July 1, 2003 through January 31, 2004. All other terms and conditions are set forth therein. The document was returned to the Health Department for further signatures and handling.

Resolution 2004-088 and Letters – The Commissioners signed Resolution 2004-088, dated September 3, 2003, canceling the November 2003 Special District Elections and Acclamation of Water and Sewer District Directors. Nine (9) letters were sent to the following Special Districts, requesting that the named candidates be elected by acclamation for the election scheduled for November 4, 2003:

- 1) Canyon River Missoula County Water and Sewer District; no candidates.
- 2) East Missoula County Sewer District; three positions open for 4-year terms (Jack Ballas).
- 3) Elk Meadows Ranchettes County Water District (Frenchtown); two positions open for 4-year terms (no candidates).
- 4) Lorraine South County Water District; two positions open for 4-year terms (Ginger Gillin).
- 5) Seeley Lake Missoula County Sewer District; two positions open for 4-year terms (Robert C. Harlock, Jr.).
- 6) Seeley Lake Missoula County Sewer District; three positions open for 4-year terms (Robert C. Harlock, Jr. and Glen A. Morin).
- 7) Shelby Addition County Water District (Lolo); two positions open for 4-year terms (Tony Fassio and Cheryl Armstrong).
- 8) Spring Meadows County Water District; three positions open for 4-year terms (Kelly Dudley, Bill Mueller and Wendell Petersen).
- 9) Target Range Sewer and Water District; three positions open for 4-year terms (Gary Clark and James McDonald).

The letters were returned to the Elections Office for further handling.

Contract – The Commissioners signed a Contract between Missoula County and Green Diamond Contracting, Inc. for the construction of a walkway and bicycle path (0.87 miles in length), adjacent to Cote Lane in Missoula. The bid was awarded on August 13, 2003, for a bid price of \$75,575.94. All other terms and conditions are set forth therein. The document was returned to Doreen Culver, Bidding Officer, for further handling.

Other items included:

- 1) Commissioner Curtiss will attend the ribbon cutting at the new 1<sup>st</sup> Interstate Bank on September 11, 2003.

#### PUBLIC MEETING – September 3, 2003

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

#### Pledge of Allegiance

#### Public Comment

None

#### Routine Administrative Actions

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$365,296.59. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

- Decisions:
- a. Petition to Vacate an Alley between Main and Marion in Frenchtown
  - b. Petition to Vacate Marion Street in Frenchtown
  - c. Petition to Vacate Anjalo Street in Frenchtown

- a. This is a petition to abandon "the alley between Main Street and Marion Street from Ducharme Street to Anjalo Street, located in Frenchtown Townsites in Section 34, Township 15 North, Range 21 West, in Missoula County, Montana."

The reason for the request is as follows: 1) To enhance the ability of landowners (only one on both sides of alley) to use and enjoy the property.

The following landowners have been notified: Louis Marvin Smith and Deanna D. Smith, Roman Catholic Church, Frenchtown Rural Fire District, Roman Catholic Bishop – Helena, and Theresa A. Shourds.

- b. This is a petition to abandon "Marion Street from Ducharme Street to Anjalo Street, located in Frenchtown Townsites in Section 34, Township 15 North, Range 21 West, Missoula County, Montana."

The reason for the request is as follows: 1) To enhance ability of landowners around vacated street to use property.

The following landowners have been notified: Tabish Brothers Distributing Inc., Frenchtown Rural Fire District, Theresa A. Shourds, Montana Rail Link Inc., and Roman Catholic Church.

- c. This is a petition to abandon "Anjalo Street from Main Street to Marion Street, located in Frenchtown Townsites in Section 34, Township 15 North, Range 21 West, Missoula County, Montana."

The reason for the request is as follows: 1) To enhance the ability of landowners around vacated street to use the property.

The following landowners have been notified: Theresa A. Shourds, Roman Catholic Bishop – Helena, Roman Catholic Church and Frenchtown Rural Fire District.

Chuck Wright, Assistant Public Works Director, stated that he and Commissioner Carey conducted a site inspection of the requests. The requests do not present any problems and he would recommend approval of the petitions. He also noted that the remainder of the alley in Block 6, east of Anjalo Street, should also be included in the vacation.

Colleen Dowdall stated that if this was a result of the site inspection, it would be acceptable to vacate that portion also.

Chuck Wright stated the legal description should be "all the remaining alley in Block 6, east of Anjalo Street."

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

Commissioner Curtiss moved that the Board of County Commissioners approve the petition to abandon "the alley between Main Street and Marion Street from Ducharme Street to Anjalo Street, including the portion of the alley in Block 6 east of Anjalo Street as noted during the site inspection, located in Frenchtown Townsites in Section 34, Township 15 North, Range 21 West, in Missoula County, Montana." Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the petition to abandon Marion Street from Ducharme Street to Anjalo Street, located in Frenchtown Townsites in Section 34, Township 15 North, Range 21 West, Missoula County, Montana. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the petition to abandon Anjalo Street from Main Street to Marion Street, located in Frenchtown Townsites in Section 34, Township 15 North, Range 21 West, Missoula County, Montana. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

#### **Hearing: Hillberry Center Second Summary Subdivision (2 lot Commercial) – Lolo Shopping Center**

Tim Worley, Office of Planning and Grants, presented the staff report.

This is a proposal by Steven Hillberry, represented by Nick Kaufman of WGM Group, Inc., to divide 0.91 acres into two commercial lots. Lot 1 is proposed to be 18,091 square feet and Lot 2 is proposed to be 21,654 square feet. The parcel to be divided is Lot 3 of the Lolo Shopping Center, a subdivision which originally dates back to 1987. The property is located on Tyler Way, approximately 100 feet east of the intersection with U.S. Highway 93 South in Lolo. The property is outside Missoula's Urban Growth Area (UGA).

The eastern portion of the current lot has a professional office and the western portion of the lot is currently undeveloped. Most of the lot is paved with some limited landscaping adjacent to the current building and Tyler Way. The property is unzoned. The Lolo Regional Plan is the Comprehensive Plan for the area and it designates the land use in this area as General Commercial. The proposal substantially complies with the General Commercial recommendation in the Comprehensive Plan.

Access is provided by Tyler Way, a 40 foot wide paved road within a 60 foot right-of-way with curbside sidewalk. An area on either side of the proposed lot line will be part of an interior paved travel lane. The proposal is to provide 90-degree parking adjacent to both side of the interior travel lane.

The location will be served by RSID 901 for water and sewer service. Missoula Rural Fire District's Lolo station is under 2 miles from the site. There is also a fire hydrant within 500 feet of the site to provide water for fire protection purposes.

There is one variance request as recommended by the Planning Board which is from commercial road standards on Tyler Way (which would be a 44 foot paved surface width within an 80 foot right-of-way). Staff felt the 40 foot paved width within a 60 foot right-of-way was sufficient for a two lot commercial development. The variance request is also supported by Public Works.

There were other variance requests associated with staff's private road interpretation which were not considered necessary by the Planning Board and have been stricken from the recommended motions of approval. Staff recommends approval of the subdivision with one condition for a development agreement for weed control. Two other conditions recommended by staff were also considered unnecessary by the Planning Board and have been deleted.

Chairman Carey opened the public hearing.

Nick Kaufman, WGM Group, Inc., developer's representative, stated that he would be happy to answer any questions the Board may have.

Elmer Palmer, Lolo Community Council, stated that the Council was highly in favor of the proposal. He did not understand why it was necessary to worry about weed abatement in a blacktopped parking lot.

Tim Worley stated that planning staff wondered the same thing. In a discussion with Bill Otten of the Weed District, he recommended the condition be retained to address any disturbance that might occur on future Lot 1 as a result of development.

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

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Article 3-2(3)(B) of the Missoula County Subdivision Regulations requiring a 44 foot paved width within an 80 foot right-of-way for Tyler Way. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the Hillberry Center Second Summary Subdivision, based on the findings of fact set forth in the staff report and subject to the condition contained in the staff report, accepting the recommendations from the Planning Board. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

#### **Hillberry Center Second Summary Subdivision Condition of Approval.**

##### **Weeds**

1. The subdivider shall enter into a development agreement for weed control that states the following: "Noxious weeds shall be controlled in accordance with the Montana County Weed Control Act and the Missoula County Noxious Weed Management Plan. Any ground disturbance created by maintenance or construction shall be revegetated with beneficial species at the first appropriate opportunity after maintenance or construction is complete." *Missoula County Weed District recommendation.*

#### **Hearing: Maloney Ranch, Phase VIII (46 lots on 205.6 acres) – Lower Miller Creek Road**

Chairman Carey opened the public hearing.

Monte Sipe, Office of Planning and Grants, presented the staff report.

This is a request from Maloney Properties, LLC, represented by WGM Group, Inc., to subdivide a 205 acre tract of land into 46 lots with a Planned Variation to the C-A3 zoning to reduce the front, rear and side setbacks within the subdivision. The property is located to the west and southwest of Lower Miller Creek Road. It is currently vacant agricultural land which was part of the original Maloney Ranch.

Staff is recommending approval of the subdivision and Planned Variation with conditions. Planning Board heard this request in conjunction with a public hearing on August 19, 2003. At the outcome of that meeting, Planning Board recommended approval of the Planned Variation to C-A3 zoning district standards with amendments by a vote of 5 to 0 and recommended approval of the subdivision with 13 conditions by a vote of 4 to 1.

The 1997 Miller Creek Comprehensive Plan Update designates a majority of the area proposed for development as "Residential (Reserved) – 1 dwelling unit per 5 acres" with some portions designated Residential Rural Clusters, Rural/Natural Resource/Agricultural Areas and Residential – 4 dwelling units per acre. The property is outside the Urban Growth Area and the Sewer Service Area.

A majority of the property is zoned C-A3 (1 dwelling unit per 5 acres), with a small portion on the north (Lot 46) zoned C-RR1 (1 dwelling unit per acre). Those portions north of Lower Miller Creek Road are unzoned. The gross residential density for 46 units on 205 acres is 1 dwelling unit per 4.5 acres.

While the calculation of density based on land use designations may yield fewer dwelling units, the proposal is in accordance with the Zoning Density Transfer and Assignment Covenant that involved the transfer of density from several parcels zoned C-A3 in the Maloney Ranch LLC ownership. Density rights were shifted from some parcels and added to others. Conservation easements were established on portions of the land where the density was transferred from.

The applicant has proposed a Planned Variation to the C-A3 zoning which applies to a majority of the property. The request is to reduce the front and rear yard setback requirement from 50 feet to 25 feet and reduce the side yard setbacks from 50 feet to 15 feet with the exception of those lots with side yards adjacent to property not contained within the proposal. The 50 foot side yard setbacks would still apply to some lots.

Staff is recommending a condition that language be added to Section 3.8, Setback Lines, of the covenants advising lot owners that Lots 1, 21, 25, 41, 42 and 46 contain lots with side yards immediately adjacent to property not part of the site and a side yard setback of 50 feet is required. Planning Board recommended that the Planned Variation be amended to only allow reduced setbacks for proposed Lots 1-20 with the exception of the northwest side setback for Lot 1, which would remain at 50 feet.

The proposed access for the subdivision is from Lower Miller Creek Road (to be renamed Maloney Ranch Road), an existing gravel public road of varying width within a 60 foot right-of-way. Three internal public roads, Fresno Loop, Teigen Court and Haugan Court, are proposed to serve the residential lots. Proposed access to Lots 25, 38-41 and 42-46 is directly from Maloney Ranch Road.

The applicant states an estimated 322 to 460 automobile trips per day are anticipated over the existing streets. This equates to between 7 and 10 vehicle trips per day from each lot. The applicant further states that during the planning stages of the Master Plan for Maloney Ranch, a traffic study was conducted. The study showed the "Wye" intersection (Upper and Lower Miller Creek Road) was deficient.

In 1997, the Miller Creek Transportation Mitigation Proposal was adopted by the Missoula County Commissioners. This agreement requires developers in the Miller Creek Basin to pay \$1,800 per lot to fund improvements to the Miller Creek "Wye." This proposal would require the developer to pay \$1,800 per lot for a total of \$82,800 into the Miller Creek Transportation Mitigation Fund, as recommended by Condition 1.

Maloney Ranch Road is proposed with two different pavement widths. A 32 foot pavement width is being proposed east of Lot 37 and a 24 foot pavement width is being proposed west of Lot 37. Maloney Ranch Road is the primary access to the Lower Miller Creek Valley and this subdivision proposal.

Missoula County Subdivision Regulations Article 3-2(14)(D) requires that primary access to the subdivision on collector streets have a width of 32-40 feet. Public Works has concluded that Lower Miller Creek Road (Maloney Ranch Road) is a collector street. In addition, Missoula County Subdivision Regulations Article 3-2(8)(D) requires bicycle lanes to be provided on streets which are functionally classified in County records as collector streets or greater.

A 32 foot paved width would accommodate two 12 foot traffic lanes and 4 foot bicycle lanes, one on each side. The 32 foot road width would also be consistent with road improvements proposed for Maloney Ranch Phases V-VII, which includes bicycle lanes.

Staff is recommending a condition that the entire length of Maloney Ranch Road, as shown on the preliminary plat of Maloney Ranch Phase VIII, be designed with a 32 foot wide pavement width which includes two 12 foot traffic lanes and 4 foot wide striped bicycle lanes on each side.

The applicant has proposed three internal public roads within the subdivision – Fresno Loop, Teigen Court and Haugan Court. Missoula County Subdivision Regulations Article 3-2(6)(I) requires a minimum 24 foot pavement width within a 60 foot easement. All interior roads are proposed as 24 foot paved roads with 2 foot shoulders located within 60 foot public right-of-way easements.

Mountain Line commented that the property is close to the Missoula Urban Transportation District boundary and is requesting that the property owners petition into the Missoula Urban Transportation District. Staff has recommended a condition that the subdivider petitions into the District.

Missoula County Subdivision Regulations Article 3-1(7) states where a subdivision is located with the Urban Growth Area, or will create a lot one acre or larger outside the Urban Growth Area which is likely to be further divided in the future, the governing body may require that the plat show location of lot lines, buildable areas and other details of layout to allow future divisions without interfering with the orderly extension or preservation of adjacent streets, sidewalks and non-motorized travel corridors.

The 1997 Miller Creek Comprehensive Plan recommends that infrastructure should be developed to accommodate present development and planned to meet the needs of anticipated growth. This proposal is located in close proximity to the Urban Growth Area and has the potential for increased density in the future, especially if a new bridge across the Bitterroot River from U.S. Highway 93 is built.

Staff is recommending a condition of approval that 60 foot conditional public access and utility easements are shown on the final plat substantially in conformance with the locations shown in Attachment B of the staff report. These right-of-way easements would be conditional on future development of the lots within this subdivision and property to the east.

Missoula County Subdivision Regulations Article 3-2(8)(A)(iv) requires all subdivisions outside of the Urban Growth Area and located on public roads to provide internal pedestrian connections, pedestrian connections to school bus stops and to adjoining neighborhoods. Additionally, Article 3-2(8)(C) requires non-motorized transportation facilities to be continuous and provide access to all lots within the subdivision and provide circulation linkage or safe access to bus stops, schools, playgrounds, shopping, transportation, parks, common areas or open space.

Maloney Ranch Road is the primary means of access to this 46 lot subdivision. The applicant is proposing a 5 foot wide asphalt walkway along one side of Fresno Loop, Teigen Court and Haugan Court and Maloney Ranch Road east of Lot 37. A Class III low impact trail (2 foot wide native soil) is proposed along the 1.25 miles of Maloney Ranch Road shown on the preliminary plat west of Lot 37.

OPG staff is recommending that a Class III low impact trail (2 foot native soil) be installed on one side of the entire length of Maloney Ranch Road within the subdivision. Additionally, the walkways shall provide for connections across the drainage swales at all intersections of the internal roads and Maloney Ranch Road.

The property is outside of the Missoula Wastewater Service area. Proposed lots would be served by individual water wells and septic systems.

Section 3-8 of the Missoula County Subdivision Regulations requires parkland dedication, donated cash-in-lieu of parkland dedication or open space set aside as common area for major subdivisions. The parkland dedication required for this subdivision is 2.57 acres in area. The applicant is proposing no parkland or cash-in-lieu of parkland or common area.



The applicant is requesting the parkland/cash-in-lieu waiver based on the parkland dedicated with the first four phases of the Maloney Ranch Master Plan and conservation easements previously deeded.

Sweet Grass Addition Phases I and II dedicated 25.41 acres more than the regulations required. These parks are located approximately 1.5 miles from the proposed lots in Phase VIII. A subcommittee of the Missoula County Park Board met to discuss this proposal and stated it appears that the Maloney Ranch Master Plan included over 50 acres of common area which far exceeds the required amount of park dedication. Staff is recommending that the parkland dedication waiver for the required 2.57 acres be approved for this proposal.

The applicant stated that 81 new students would be added to the school district. Missoula County Superintendent of Schools commented that students residing in this subdivision would attend Missoula School District No. 1.

The Missoula Rural Fire District will serve the subdivision. A fire station is located approximately 5 miles from the property. The applicant has proposed the installation of residential fire sprinklers as the method of fire protection for the subdivision. Staff has recommended that the plans for fire sprinklers in each home be approved by the Missoula Rural Fire District prior to issuance of a Zoning Compliance Permit and that this language be included in the covenants.

Portions of the property are located within a FEMA designated 100 year floodplain. These areas have been designated as "No Build/No Improvement" zones on the face of the plat and are referenced in the covenants.

The subdivision has requested a variance to Section 3-3(1)(E) of the Subdivision Regulations prohibiting through lots for proposed Lots 28 and 29. Staff is recommending approval of the variance request.

No public comment has been received in regard to this request. A memo has been provided with revised conditions and findings of fact if the Board of County Commissioners choose to approve the Planning Board's proposed amendments.

John Gass, WGM Group, Inc., developer's representative, thanked Monte for his time on this project. He encouraged the Commissioners to approve the project.

Elmer Palmer, Lolo Community Council, stated that this proposal is for 46 lots and several subdivisions in the Lolo area have recently been approved for approximately 100 lots. All of the vehicles from every one of these lots, even with a new bridge across the Bitterroot River, will contribute to traffic at the intersection of Brooks and Miller Creek Road. Unless there are some mitigations made, this could end up just like California, where it takes an hour and a half to go five miles to work. Looking at some sort of bypass to get around Missoula should probably be done soon for the traffic that doesn't want to come into the City. The traffic patterns really need to be looked at. Each subdivision separately doesn't add a substantial amount of traffic, but when they are all added together, it creates a lot of traffic congestion.

Commissioner Curtiss asked where the change in road name would begin.

John Gass stated that Maloney Ranch Road currently exists through the first two phases of Maloney Ranch.

Commissioner Curtiss asked where this property was in relation to the river.

Greg Robertson stated the property is south of Blue Mountain Road. All three alternatives for a bridge across the river would be north of this location.

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

Commissioner Curtiss asked Monte about the revised motions as presented in his memo.

Monte Sipe stated a majority of the items were discussed at Planning Status. The revised findings address the 25 foot "No Build" zones on both sides of all conditional access easements and the differences between an asphalt walkway and a Class III low impact trail. Planning Board suggested some changes to the Planned Variation, however staff is recommending approval of the Planned Variation as requested, which would allow 25 foot front and rear setbacks and 15 foot side setbacks, with the exceptions of those lots mentioned in the staff report.

Commissioner Curtiss moved that the Board of County Commissioners approve the Maloney Ranch Phase VIII Planned Variation, based on the findings of fact in the staff report and subject to the standards contained in Attachment A. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Article 3-3(1)(E) of the Missoula County Subdivision Regulations prohibiting through lots, based on the findings of fact contained in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the Maloney Ranch Phase VIII Subdivision, based on the revised findings of fact in the staff report and subject to the recommended revised conditions in the memo dated September 3, 2003. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

#### **Maloney Ranch Phase VIII Subdivision Conditions of Approval:**

##### **Roads/Driveways/Drainage**

1. The developer shall contribute \$1,800 per lot to the Miller Creek Transportation Mitigation Fund, subject to approval by County Public Works, prior to final plat approval. *1997 Miller Creek Transportation Mitigation Proposal and County Public Works recommendation.*
2. Maloney Ranch Road (currently Lower Miller Creek Road) shall be designed with a 32 foot pavement width to include two 12 foot traffic lanes and 4 foot striped bicycle lanes the entire length as shown on the Preliminary Plat of

Maloney Ranch Phase VIII, subject to review and approval of County Public Works, prior to final plat approval. *Subdivision Regulations Article 3-2(3)(B), 3-2(8)(D) and staff recommendation.*

#### **Transportation**

3. The subdivider shall present evidence of petitioning into the Missoula Urban Transportation District (MUTD), prior to final plat approval. *Subdivision Regulations Article 3-2 and MUTD recommendation.*

#### **Conditional Access Easements**

4. 60 foot conditional public access and utility easements shall be shown on the final plat in substantial conformance with locations shown on Attachment B of the staff report, subject to review and approval of OPG and County Public Works, prior to final plat approval. *Subdivision Regulations Article 3-1(7), 3-2(1)(E) and staff recommendation.*
5. The following statement shall appear on the face of the plat and refer to the conditional public access and utility easements, subject to review and approval of the County Attorney's Office, prior to final plat approval:

"The owners dedicate 60 foot rights-of-way for purposes of public roadways and utilities over and across the lots as shown on the subdivision plat, conditioned upon rights-of-way being used as roadways at the time they are needed to serve future subdivisions within Maloney Ranch Phase VIII and the parcel to the west of the subdivision. The lot owners and future owners of lots in the Maloney Ranch Phase VIII Subdivision will not be responsible for the construction of the future roadways if construction is attributable to divisions of land to the west or re-subdivision of lots within Maloney Ranch Phase VIII with another approved access to an existing public road. No structures, permanent improvements or utilities shall be placed within the rights-of-way so as to interfere with their eventual use as public roadways." *Subdivision Regulations Article 3-1(7), 3-2(1)(E) and staff recommendation.*

#### **No Build Zones**

6. 25 foot "No Build Zones" shall be designated on both sides of all conditional access easements shown on the face of the final plat, subject to review and approval of OPG, prior to final plat approval. *Subdivision Regulations Article 3-1(7) and staff recommendation.*

#### **Pedestrian Access**

7. A Class III low impact trail (2 foot wide native soil) within the public right-of-way shall be installed along the 1.25 miles of Maloney Ranch Road (currently Lower Miller Creek Road) shown on the preliminary plat west of Lot 37. Additionally, the walkways shall provide for connections across the drainage swales at all intersections of the internal roads and Maloney Ranch Road, plans for which shall be subject to review and approval by County Public Works, prior to final plat approval. *Subdivision Regulations Article 3-2(8)(C), Public Works, Health Department and staff recommendation.*

#### **Fire Protection**

8. The applicant shall post address signs and plans shall be subject to review and approval by the Missoula Rural Fire District prior to final plat approval. The Covenant shall be amended prior to final plat approval by adding the following language: "Each residence must install an address sign at least six inches in height made of a reflective material that is clearly visible from the street." *Subdivision Regulations Article 3-1(1)(B), 3-2(2)(G) and Missoula Rural Fire District recommendation.*
9. Plans for installation of a residential fire sprinkler system in each home shall be approved by the Missoula Rural Fire District prior to Zoning Compliance Permit issuance and this language shall be included in the covenants, subject to review by OPG, prior to final plat approval. *Subdivision Regulations Article 3-7(1) and staff recommendation.*
10. The Missoula Rural Fire District shall review and approve the design of driveways in excess of 150 feet in length, prior to Zoning Compliance Permit approval and this language shall be added to the covenants, subject to review by OPG, prior to final plat approval. *Subdivision Regulations Article 3-2(10)(E) and Missoula Rural Fire District recommendation.*

#### **Hillside**

11. The final plat shall designate 2,000 square foot contiguous buildable areas for Lots 25 and 39-41, subject to review and approval by OPG. *Subdivision Regulations Articles 3-15(4) and staff recommendation.*

#### **Weeds**

12. A Revegetation Plan for disturbed sites shall be reviewed and approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Weed Board recommendation.*

#### **Health and Safety**

13. The covenants shall include a provision advising property owners of the Health Department recommendation that all new construction incorporate passive radon mitigation systems. The language of the provision shall be subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-1(2) and City-County Health Department recommendation.*

#### **Covenants**

14. Language shall be added to Section 3.8, Setback Lines, of the covenants advising lot owners that Lots 1, 21, 25, 41, 42 and 46 contain lots with side yards immediately adjacent to property not part of the site and a side yard setback of 50 feet is required. Section 4.4, Amendment, shall be modified to state: The sections regarding setback lines, areas of "No Build/No Improvement," driveways, fire protection, weed control, living with wildlife, trash and garbage, and animals and pets cannot be changed without the concurrence of the governing body. These amendments shall be subject to review and approval by OPG prior to final plat approval. *Missoula County Zoning Regulations 8.13(D)(5) and staff recommendation.*

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

THURSDAY, SEPTEMBER 4, 2003

The Board of County Commissioners met in regular session; a quorum of members was present. Late in the afternoon, the Commissioners traveled to Seeley Lake to conduct a hearing for the Seeley Lake Sewer District.

Claims Lists – Commissioners Carey and Curtiss signed three (3) Claims Lists, dated September 3, 2003, with the following grand totals:

- 1) \$88,849.02;
- 2) \$3,541.24; and
- 3) \$411.12.

The Claims Lists were returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated September 4, 2003, with a grand total of \$120.00. The Claims List was returned to the Accounting Department.

Replacement Warrant – Chairman Carey examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Alyssa Lockwood as applicant for Accounting Warrant #278417, issued August 22, 2003 in the amount of \$277.33 (for payroll). No bond of indemnity is required.

Monthly Report – Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Shirley E. Faust, for the month ending August 31, 2003.

Monthly Report – Chairman Carey examined, approved and ordered filed the corrected copy of the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending August 31, 2003.

#### ADMINISTRATIVE MEETING

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

Agreement – Chairman Carey signed a Subordination Agreement, dated September 4, 2003, between Missoula County (as holder of the Deed of Trust and Note) and Jonathan L. Blacketter, a First-Time Homebuyer who is refinancing property known as Lot 23 in Block 65 of South Missoula. A Note in the sum of \$1,748.00 is secured by First Interstate Bank. The document was returned to Jenifer Blumberg in the Office of Planning and Grants for further handling.

Agreement – Chairman Carey signed a Subordination Agreement, dated September 4, 2003, between Missoula County (as holder of the Deed of Trust and Deed Restriction Agreement), District XI Human Resource Council, Inc. (Lender), and Claudia M. Lambert, a First-Time Homebuyer who is refinancing property located at 2304 West Vista Drive, Missoula. A Note in the sum of \$19,190.00 is secured by a Montana Trust Indenture and Note. The document was returned to Jenifer Blumberg in the Office of Planning and Grants for further handling.

Resolution No. 2003-089 – The Commissioners signed Resolution No. 2003-089, dated September 4, 2003, a Resolution to abandon a portion of the road situated in the E½ of Section 25, T 15 N, R 22 W, PMM (I-90 and Burlington Northern Railroad). The road is not needed for public right-of-way purposes.

Other items included:

- 1) The Commissioners approved Scot Meader's recommendation to award low-bidder Markin Consulting (Maple Grove, Minnesota) the contract to conduct a Market Demand and Financial Feasibility Study for a new multi-purpose events building at the Fairgrounds.
- 2) The Commissioners supported the suggestion by the Park Board to honor Park Stewards in Missoula County who do exceptional work. The Park Board would like to have an annual award and permanent plaque that will be displayed in the Courthouse.

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

#### PUBLIC HEARING – Thursday, September 4, 2003

##### INTENTION TO LEVY TAX IN THE SEELEY LAKE SEWER DISTRICT

Seeley Lake Elementary School Multi-Purpose Room, Seeley Lake, MT – 7:00 P.M.

The Public Hearing was opened at 7:00 p.m. by Chairman Bill Carey. Also present were Commissioner Jean Curtiss and Chief Civil Deputy County Attorney Mike Sehestedt. Additionally, 5 members of the Seeley Lake Sewer District Board were also present, including: Glen Morin, Tom Morris, Bill Bogardus, Dave Whitesitt and Penny Cops.

Chairman Carey stated that the purpose of the hearing was to take public comments on the issue of collecting \$72 from property owners in order to move the sewer project forward. There were some inaccuracies in the notice that was sent to residents; it stated the purpose was to pay for the Preliminary Engineering Study. That has already been done. The money collected from this \$72 levy is to finance the operations of the Sewer District Board and help position them to receive grants, etc.

Mike Sehestedt stated the Commissioners are at the hearing because the Sewer Board has indicated that their revenues are not sufficient to go forward with the studies and work needed to determine whether and what a sewer system for Seeley Lake should look like. Under the statutes, when a request of this kind is made to the Board of County Commissioners, the Commissioners have to give notice to all of the property owners in the District. The purpose of the hearing is to take comments from the people about the request to levy this assessment. It is based on a per parcel charge, not the value of the property. After the hearing, the Commissioners will make a decision as to whether or not to go forward with the assessment. If they decide to go forward, it will be added to the tax bill for this year, with half due in November, 2003 and

half due in May, 2004. The money will go exclusively to the Seeley Lake Sewer District and they will control its expenditure. The County will collect the money but it will go to the Sewer District exclusively.

Glen Morin: Here goes nothing. Once again a little bit of background on the sewer and how we got ourselves in this spot. We did a survey, an informative one, in the 2000 election we had here at the school. We had 50% wanted the sewer system now, 29% more if the water had degradation and 69% were willing to pay a fee of \$5 per month at that time. At that time we were going through and seeing how much money we needed and everything. Since that time, we've learned quite a bit. That was in the year 2000. The questions that the Board faced were: How do we continue to do the Butte School of Mines water study, and they did that back in '96. They requested at that time that we should continue to do a water study of the area. The other question is: Do we need a sewer? And, of course, three, is then: Okay, this means dollars, well, how are we going to get dollars? First we want to be able to do a water study to keep the good quality of water in Seeley Lake and do we need to. One way is to get fees, another way is possible grants which we've got some already working for us. The need. Well, we need to get a preliminary engineering company in here to do a study of the area so that we can make a decision on if we need a sewer or not. Again, to do a Preliminary Engineering Report (PER), we're going to have to have fees and then grants. In August of 2000, the Board passed a resolution to assess a \$6 a month fee for the operation to continue to do the water study. That was counting the lots we had and how much we would need and we increased it by a dollar. But in the mean time, the fund raising group got together and they raised almost \$30,000. And the fundraiser gave us \$10,450 for the first year of operation and come December, here, the rest of that money will be gone. And then of course, the needs continue. Next year, for 2004, our operation budget is going to be around \$11,000. We do have a County debt, we never had any money in the Sewer District so we never could pay our election debt that we've had, so they've been kind and haven't come after us totally. And then the water study is \$10,000. To get the \$6, we would get around \$35,000 and then there's also a possible \$5,000 grant out there that we haven't quite got in our hands, but Ralph mentioned to me tonight that looks like it's signed and we will have the other one and that's \$5,000 for the water study. And then also, with the \$6 a month it's going to get us operation, it's going to take care of the water study and also money for matching money that we need for matching grants to continue with either water study or if we get more into the sewer system. Okay, then the PER progress, the purpose for the Board and the community is to make an educated decision about the sewer. We did hold that meeting last summer, notices were given, the Board and advisory committee selected an engineering firm. We selected an advisory committee to help us make a decision on the right engineering firm that we selected. That worked out really good, we have some really good intake on that. The engineers are going to assess the need and then again it will be brought to the public on what the need will be. And then the engineers will provide a solution and if a sewer is needed, then there will be some hard dollar facts so we can make some really good decisions there. And again, it will be a public meeting and then there'll be another, make a decision and any action required is going to be by a District vote. Have I left out anything.

Mary Ann Morin: I'm his wife. I should have had cue cards. I was just telling him that he forgot to say that the fundraisers raised the money for the Preliminary Engineering Report, the matching grant.

Glen Morin: That's really important. The money that was raised by the business people and community, individuals in the community, \$10,000 was going to be for operations, \$15,000 was set aside for the TSEP grant that we'll be getting, to match that, also the other grant that I was talking about is the conservation, the DNRC, it's a \$5,000 grant and Ralph was saying tonight that it looks like the paper work is signed, they agreed to give it to us, just more paperwork's got to be done. and we'll have the \$5,000 for the water study, so that will give us, we'll be a little bit short with the amount of money that we have left in the account for the water study, so that's where we're at there.

Mike Sehestedt stated that he forgot to mention in his initial remarks that this is a one-time fee. The authorization is good for only one year and one assessment. If the Board wants or needs an assessment for the next year, this process has to happen again next year. Just to make sure everybody is clear, this hearing is about a one time, one year assessment.

Yvonne Mackie: I'm Yvonne Mackie. I have a few points that need to be made. On these lots that you're assessing \$72 for each lot, most of these are single family with multiple lots. This happened with the Water Board and now it's going to happen with the sewer and most of the families in our District, which is very small, I don't know how they came up with such a small District, are either mill workers or retired people who cannot afford this, even the \$72. We looked into having the lots made into one property, however, you have to get a surveyor to erase inner lines, which seems ridiculous to me, perhaps you guys could come up with something where you could just erase the lines, because it doesn't change the boundaries of the property. Okay, let me see, and I think we need to change the boundaries of the sewer system, it's very small and very prohibitive. It doesn't even go with the whole water system. Those are my only points to be made at this time. Thank you.

Harold Sheets, Jr.: I'm Harold Sheets, Jr. and I have property in the District. I've lived here for 46 years and I've seen a lot of buildup in Seeley Lake, especially in the past 10. As Yvonne had stated, this District is awful small and I don't see a lot of people paying this price that we we're going to pay. My other question was about the one year and that was answered and I have no problem with that. If I had more than one property, as Yvonne said, with nothing on it, no improvements, then I would have a problem with that. My biggest concern is whether this sewer is being jammed down us for progress of Seeley Lake or is it being jammed for progress of water quality. I see more of wanting to build Seeley Lake up as a city rather than keeping it peaceful the way I grew up and want to be here for. This is why I live here. So that's my only concern to the Board is whether this is for money making purposes for millionaires and developers or is this for water quality. If it's for water quality, I don't have a real problem as long as the rates are small and stay small instead of up, up, up, up, up. When I first started the Water District I was paying \$11 a month, now I'm paying \$42 a month and it's going to go nothing but up. Never goes down. That's my biggest concern is that this is to turn this into a city and big story buildings rather than water quality and I think the water quality is the main issue here and whether the water quality is from the sewers or whether the water quality is destroyed by the tourists and their boating and their activities. That's the biggest concern of mine. Thank you.

Roger Johnson: My name is Roger Johnson and I'm President of Pyramid Mountain Lumber Company. I'd like to kind of address the County Commissioners and also the folks in the audience, if that's permissible. We had a sewer meeting, there was a sewer meeting last winter and I attended that and that sewer meeting was very poorly attended and at that time, the Sewer Board talked about the fact how long they'd been in existence and the fact that they didn't have any money to do anything and that it was very difficult to continue on that kind of a basis. The sewer issue is not a new issue, it's been

around a long time. And, when we did put our District in, the community made a District out of a smaller area because it was a concentrated area and it was before a lot of development had come in. And so, yes it is small and we need to look at a bigger area to carry the burden of a sewer and a sewer that would handle future growth and that's what the preliminary study is going to do for us, we hope. We all know it's been a very controversial subject. Since its inception, the people that are in that small District have felt that, as Harold indicated, that maybe it benefits more the business community than it does the residential in some respects and I would submit that in a lot of respects it has a lot to do with what we want our community to be in the future. In looking at that, we got a group of people together, interested individuals and business people, and we said, hey, let's look at some way of getting this study done and not put it on the backs of the District and look and see what this is going to cost, what is the feasibility. So, from there, we were very successful in getting some money to get the preliminary study going. The Community Council has identified issues that need addressed in our community and many are tied to a sewer. I wasn't going to get up here tonight, but I thought I'd dust this off and so, I'm going to read it because I haven't seen it for awhile. But anyway. What are essentials for a growing community. Well, certainly, public health is a big issue and preserving the quality of our water in lakes, streams and rivers, in the ground water in Seeley Lake certainly are important. The pressure on the water sources have increased over the years from the Double Arrow development, increased year round residents on the lake and you just know how many of the places on the lake were just summertime users and now are full time users, and deteriorating make-shift septic systems and, every year, Lewis can tell you stories about digging up car bodies and whatever that were used for septic tanks. And we are fortunate today to not be in trouble, somebody isn't coming and knocking at our door and saying you got to do something and you got to do it now. We're looking ahead. The other gives us an opportunity to look for grants and low interest money to keep our costs down. Looking ahead 20 years, we can only look at what has been accomplished in making our recreation a year round business in Seeley Lake and not just only in the summertime. A lot of those opportunities are hampered because of the limited accommodations that are in the area, of course I'm speaking of motels and what have you, where business can't, it's prohibitive to buy a lot with the septic requirements. And the big one, and this one really touches me, is affordable housing. We have employees, some 20% of our employees, and that's increasing, are commuting and we have teachers in the community that are commuting into our community. Just Pyramid alone, it's got something like \$750,000 in payroll that leaves this community, that is money we give them and they take out of the community when they take their paycheck home. We talked amongst the businesses and getting people that can come in and find a place to live is just terrible in town and it's getting worse, there's no sight of getting better. The only little bit of help that we've gotten over the last few years is Don's apartment houses and quite frankly, we're not real proud of some of the people we have to hire and we have to hire them because we just can't get anybody else. They're people that are coming in, that 20%, where we used to have a 15% turnover in our payroll, now we've got that 20% comes in and they work until they can find something closer to home and then they're gone. Improving community goods and services and opportunities are limited, again, by the 600 gallon tank per acre. Assisted living is another thing that was identified and how many of our seniors have to leave when they can't take care of themselves. They want to stay in the community but they have to leave because there isn't a facility here to take care of them. Broadening our tax base. Yeah, we got more people coming in, Harold, and we're not going to stop that and with Plum Creek's selling, there's going to be people coming in, that's inevitable. We are discovered and people are coming. But broadening our tax base gives us the opportunity for new services and housing and housing affects our taxes and they insulate the community against a large industry going out, like Pyramid. If you can't have services in town, where are the people going to work. You can't have affordable housing if folks working at the mill, that are probably the better paying jobs, then how are people going to afford a house that are working for services. The other thing that is essential for a growing community is having a sewer system that is affordable and equitable to everybody, and Harold, there isn't anybody in here that doesn't want that. So, I wanted to make that little pitch because I think we owe it to ourselves for the community and on both sides of the ledger, Harold. I think both sides are important.

Sam Snobar: My name is Sam Snobar. I'm new in the community and I'd like to thank you for letting me come up here and say a word or two. I've moved from Alaska and I work here at the mill and I've enjoyed the area. I come from a borough up in Alaska and the borough had its own sewer system as well and we started at a \$20 cost. That was our monthly fee and we were really happy with that. And then it went from \$20 to \$36, from \$36 to \$46 and I ended up selling my house because it was going from \$46 to \$65. Now this is something that, as a sewer, I really don't want to see. A low cost is what we all want, there isn't anybody in this room that says they want a low cost, no, I want to pay \$65 off the gate, no, I don't think so. The fundraising ideas and the grants and the stuff, up in Alaska where I came from, the town I came from is Ketchikan, it's an island, and there was a tourist tax, when the people came off the boat, it was something that was pre-charged on the tickets, it was people that come on the ferry. It was a \$3 charge, for anybody who showed up. Along with that, there was also, even the locals in town, if we wanted to launch our boats to go fishing, I mean, we're on an island, and you had to have a boat fee. Now you can buy a yearly fee, you can buy a weekly fee, if this is for our water, then I would suggest maybe to help raise the money to lower this \$72 and maybe even to create a fund to carry it further, to maybe think along that line, that maybe all these out of town people that are coming in, well, let's use them. Use them in the right way. Seattle built a new stadium by charging \$5 for everybody who rented a motel room. There are other ways, if the grants fall through, there are other ways. Use the people coming in. It's not going to be the people working here, it's not going to be all of us living here, because, if I'm going to launch a boat, well, I'm going to buy that yearly \$20-\$30 permit to launch my boat year round or get out on the waters. I would like to keep Seeley Lake like it is, I enjoy going swimming right after work, family meets me, we're out to the lake, that's great. But there's other ways, another ways we can use the avenues that are coming at us and I think all the people coming into the camps and all the people using the water can also help us raise this money. I'm against a very expensive sewer system. I've seen it go up and gobble the amounts away and I've seen it go down. I like to see something else happen. Raising money, there are other ways around it. A one time fee of \$72, I'm not afraid of that, I'd pay it, but if we can make a cash base that's going to consistently grow with us and help us to promote it further down the line, because in five years after the sewer's in, all of a sudden the State's going to step up and say, well, people of Seeley, you got to have this \$380,000 grinder put in the front of your sewer system and it's got to be there or we're going to do it ourselves and still charge you. Got to be able to cover that five years after the program. I've seen that happen. I just want, let's have something in place that will work for us and with us. I want to thank you all.

Shirley Mackie: My name is Shirley Mackie and we were the first ones to ever build in this District, when Thayer and Steinbrenner opened it up, we were the first house in here and at that time they made my husband cut three-quarters of a mile of power line telling us that it would never be feasible to have electricity in this area. And so, he did and a couple three houses built up around us as it started. Then I worked with Dan Cainan on getting a water system in because there was no water. We drilled a well, it cost us \$3,500 to put a well in that's 156 foot deep. The Schools of Mines, when you had your last survey, came and tested our well. I have taken it into Missoula and have it tested off and on. There has

never been no contamination in it, it is setting right, maybe 50-60 feet from where our septic system is. We had Gary put in a new septic system about five years ago and before that we had a regular rock cesspool, but at that, still our well has been in for over 35 years, never has been contaminated. And that's with property right next to us putting a septic system probably within 25 or 30 feet of it, however they don't use that anymore in the last five years. But what I'm worried about with the sewer system, it's just like the water system, they put in the water system, I worked on getting it in here, thought we needed it, we did need it, but, and it was fine at \$11 a month and then the first thing we knew it started to raise and started to raise, then they come along with this filtration system and not just one lot, if you owned three lots, you got soaked \$20 a lot, or \$14 I guess is what it is now, but for each lot, even though there's only one house on it and that is not right. Like Yvonne said, they're retired people, they're mill workers, we've had people move in and out around us, renting houses, they can't afford it, they simply cannot afford to live there. And this is what I'm afraid with the sewer system and I, like I said, we got new taxes coming up in November, I don't know what they're going to be but everybody tells us they are going to raise, so there we're going to have that on top of \$72. And like I said, there's not very many people up here that I know, yes, the businessmen can afford it, but then I think if the businessmen want to build motels or something, let them put in a sewer system that will take care of the downtown area. I really don't think we need any more motels, I'm like the other fellow, I think Seeley Lake, I hate to see it grow anymore because what we're getting is a lot of rich, retired people that's building out on the Double Arrow or out of town and they're not going to help the water system or the sewer system or anything else. So, like I said, when we moved here 45 years ago and put the first place in, I never dreamed that, they told us it would never be feasible to even put power in, so, we had to fight to get that.

Donald Ditty: My name is Donald Ditty. I've lived here in Seeley Lake since 1976 and I've seen a lot of progress and like everybody else that's been here and first all, I started in 1989, they had a Sewer District formed and they say '92, but they did have people working on the sewer thing, because they wanted to get a sewer system in here. The people were resisting because of the cost of the whole thing. There's a lot of business people and they were saying, hey, you people don't even want a sewer. That wasn't the idea. Heck, us people, we weren't against a sewer but we were against the astronomical figure of the step system that they were proposing, which a step system, if the people don't know what it is, gather 'round after the meeting and I'll diagram it for you. I am a retired Forest Engineer and I did have some duties with sewer systems and water systems, etc., and mostly civil engineering and that. But, I worked on this committee that was trying to give everybody in Seeley Lake an idea of what they were going to be up against. Everybody thinks that the grants that they look at are going to be right there for them, the government's got the money, the state's got the money, the Farmer's Bureau's got the money, boy, we're going to get in there and we're going to really make it and we're on our way. Well, I want to read this little letter here that my good friend, Don Larson, who was a legislator at the time and everyone seemed to think there wasn't any help, so we asked Don to look into this and here's the letter that he had sent back to me. It says: *Don Ditty, Seeley Lake, MT. Dear Don: I don't know whether or not you have received a copy of the enclosed report, but I wanted you to have a copy for your personal review. Community readers must continue to think about and monitor the possibilities for the development of a community sewer system in Seeley Lake. The State of Montana is very aware the funding mechanisms are inadequate for a small community such as ours. I will continue to work to develop better funding mechanisms. I just hope you in Seeley Lake position yourselves so that we, as a community, can take advantage of an opportunity to adequately and properly fund a community sewer system. Sincerely, Don Larson, Representative, House District 65, carbon copy to Seeley Lake Water District, Jim Cowan, Seeley Lake Chamber of Commerce, Pathfinder, Don Ditty, Dan Cainan, Dan Myers, Seeley Lake Ranger District, Sandy Duset and Wilma Nicholson.* I commend Don for this because he got together a report that was made up by a person called Jim E. Richards, who is a consultant. He was out of White Sulphur Springs, it says in here, anyway. He was proposing the affordability of major wastewater system improvements for small Montana communities. This report was sent to me and when I tell you that it was back in '89 and '90, people say, oh, well that's obsolete, that don't have anything to do with now. Well, it does, it has a lot to do with what's going now, the big factor is it's costing more for everything, I don't care whether it's wastewater or water systems or electrical or anything, everything has gone up, so let's face the fact of that. I'd like to read you the, unlike Roger, I can't remember all this stuff, so I have to read it off the paper. *The Nature and Scope of the Affordability Problem.* According to the Council of Infrastructure Financing Authorities (CIFA), the EPA estimated in 1986 that nearly 70% of the nation's small community wastewater systems were not meeting discharge standards and that capital needs for new and upgraded facilities were the primary cause of this non-compliance. The need to deal with sewage treatment problems is only one of the number of factors that affect the small community's ability to pay for sewer projects. Other factors include a reduction in financial assistance program and high costs to construct sewer system improvements. Because of their small size, communities of less than 2,500 population are more severely affected than are larger communities. The reason the current and proposed environmental regulations hit the smallest communities so much harder is easy to understand. These small communities have much lower household income than larger communities. They cannot take advantage of economies of scale. They have fewer people to help pay for the treatment and they are much further behind the larger localities and efficiency of treatment systems, if any, they have in place. In 1988, EPA report of preliminary analysis of the public cost of environmental protection, 1981-2000, examined 85% and forthcoming environmental regulations that deal primarily with waste disposal and drinking water and concluded the largest potential increase in average annual cost per household will occur in localities under 2,500 persons which will experience an increase of \$170 in annual costs. About 26% of all localities under 2,500 in population will be unable to finance treatment systems using revenue backed bonds or loans if the ratio of user charge to household income is kept at the current standard of 1%. Thirty percent of localities with populations less than 2,500 would be unable to finance needed treatment from general revenues. These small systems have very poor economies of scale, they have difficulties getting financing. They typically have poor overall management and have only part-time and poorly qualified operators. The revenue is inadequate and often uncertain. This is a quote from Michael Cook, Director, EPA Office of Drinking Water. Then it goes on: *The Reduction in Financial Assistance Programs.* The CIFA report outlines a problem on the national level. According to the report, EPA funding for wastewater construction grants declined by 91% from 1981 to 1987. During the same time, the Federal grant share of projects was reduced from 75% to 55% and the number of eligible communities was reduced also. The EPA has estimated that \$83.5 billion should be spent for wastewater treatment facilities by the year 2008, yet the EPA construction grant program has been authorized at only \$2.4 billion annually through 1992. No grants will be offered after 1992. Similarly, the water and wastewater grant and loan program of U.S. Farmers Home Administration was reduced from \$1 billion nation wide in 1981 to \$455 million in 1989. The overall cuts stimulated a trend to fewer, smaller loans in the Farm Bureau program and a shift of grants and loans to more financially capable communities. The situation in Montana small communities reflect the national trends. In 1984, the Governors Infrastructure Task Force evaluated 200 public wastewater systems. The study estimated that Montana's existing wastewater systems had a monetary need of more than \$230 million for repairs, replacements and construction. When the need for new central sewer systems is considered, the financial need will be approximately \$350 million according to State



Department of Commerce estimates. Montana's allocation of funds from the EPA Construction Grant Program has been reduced from \$10 million in 1980 to zero in 1990. Montana's funding under the Community Development Block Grant program of the U.S. Department of Housing and Urban Development (HUD) has been reduced from \$6.3 million in 1983 to \$5.2 million in 1990. The expenditures for water and sewer facilities in Montana under the Farmers Home Administration water and wastewater grant and loan program have declined from \$5.8 million in 1981 to \$2.8 million in 1990. It should be noted that the CDBG and FMHA monies do not fund sewer projects exclusively. Only a portion of the annual allocation is available each year for wastewater projects. Okay, now the study that these, I give you a list, I hate to read them all off, but I'll just read you a few of them. The consultant was Jim Richards and then they had the Montana Department of Commerce, Newell Anderson, Dave Cole, Community Development Bureau's Local Government Assistant Divisions, Bob McCracken, Program Manager, Community Technical Assistance Program. It goes down the list, for the Montana Department of Health and Environmental Sciences, Scott Anderson, Supervisor, Construction Grant Section, Water Quality Bureau, Dick Peterson, Environmental Specialist, Water Quality Bureau, Paul Montgomery, Environmental Engineer, Water Quality Bureau, and so on and so on, and there are several others that are listed down here that all worked on this project. So, further on ...

Chairman Carey stated that there were a number of other people who would like to speak and asked Mr. Ditty to conclude his comments.

Donald Ditty: I was just going to wrap it up. I was going to tell you that the studies were made in a little town up by Kalispell called Somers, and then Arlee, Montana, up here was number two, St. Regis was number three and a little town called Stockett, and I don't even know where Stockett is, but it's on this report. What their reports were, that any town less than 2,000 people that their findings was that the assessment, or well if you want to call it, the tax on your sewer system deal, was over \$100 a month. Now that's the study they made on them and I'm sure willing to let people copy this and I know darn well that it is done by very, very competent people and if you want to write over to the EPA or the State bureaus, you can get a copy of this, I'm sure, because this was probably not just one study, they're probably doing studies too, just like we're trying to do, but I just wanted to let the people know that with the size of this community, it's almost prohibitive unless they do get some help to go outside of this little bitty Water District thing they got plugged in and I helped put this map together so I know how small it is. I think this will give you probably an idea of what we're facing and I wanted to commend Don Larson again for his help on tonight's thing here. Thank you for being here too.

Robert Skiles: My name is Robert Skiles. I'd like to read, just briefly, something. It says, included with this letter is a notice of a hearing whether or not the County should levy a tax of \$72 per parcel on properties within the Seeley Lake Sewer District. Then it goes on to tell you, you have a map. On the second page it says, notice is hereby given that the Seeley Lake Sewer District Board of Directors has requested that the Board of County Commissioners levy a tax of \$72 per parcel of property within the Seeley Lake District for the purpose of paying for a preliminary engineering study. It has nothing to do with building a sewer. It's just a preliminary engineering study, right? Is that what this is? We're not arguing whether we need a sewer system right now, we're arguing whether or not you want to put \$72 per parcel so that you can make a study to tell us whether we need a sewer system, is that true or false?

Glen Morin: It is for the study, yes.

Robert Skiles: Okay, and that's to determine if we need a sewer system, right?

Glen Morin: Well, this is what the survey we did back in 2000, the people really wanted a sewer system, well they put a need in front of us that we need to find out why, okay, to really get a correct answer is to do a Preliminary Engineering Study and we're doing that, we have the money for the grant and also we have, we're needing money to continue to do a water study in the area that the Butte School of Mines recommended that we do, that we keep up on doing. The \$72 is just for operation and doing a water study and also give us some money for some other grants that we can get to help us.

Robert Skiles: And that's why we're here tonight. We don't care about the sewer right now.

Glen Morin: We're not doing anything about the sewer.

Robert Skiles: Okay, I just wanted to get that straight.

Commissioner Curtiss: So just to clarify, this would be a one year fee, it would help, they would finish in that year, they'd finish the engineering report, they'd continue the water quality studies and at the end of that time, you would decide, is it feasible, what would the costs be and that kind of thing. So the \$72 is a one-time, remember, one-time, and it isn't saying that then you're locked into having a sewer. That decision would be made later.

Robert Skiles: One quick thing, my six lots votes no.

Yvonne Mackie: Number 1, this survey was taking during an election, very few people show up for those elections. Why didn't they go door to door in the sewer system, they didn't do that to get this 50% wanting. I was one of the few that voted against it because I go to the elections. Number 2, you keep talking community. We are very small in this sewer system, this is not the community. This is a just a few of us. If we're going to do community, let's levy against the community, not just the individuals, which is very discriminatory. Thank you.

John Anders: I'm John Anders. I've lived here for a long, long time and like everybody else, we saw the Water District put in, in the early '60's and '70's, and it's gone up and up and up, and the sewer, although it is only \$72 for a year, I'm against it and I'd rather not like to see it.

Don Larson: For the record, my name is Don Larson, I'm a property owner in the District. First of all, I want to applaud the Sewer District members for continuing this fight. It's been going, as Roger Johnson pointed out, for over 20 years and the needs probably are as imminent now as it was then. A couple of points and everybody has touched on them briefly, but I would like to reiterate a couple of points. First of all, I think the Sewer District should revisit the boundaries of the Sewer District that they have. Everybody nodding their heads, so apparently they are. It seems to me fairly obvious that you need to include at least one of the Forest Service campgrounds just to get the Federal inclusion. And certainly, I

would hope that you have researched the viability of rural development grants from the REA and the Blackfoot Telephone and the State of Montana. There are a lot of monies out there if you go looking for them. The fellow from Alaska made an interesting observation. He pointed out that a local option sales tax is an option for us. We're a community that depends in part on tourism and as a result we probably would and could qualify for a tourism tax if you elected to go after it, if you have the courage to go after it. And the thing that Roger Johnson pointed out I think is appropriate. I think the Sewer Board needs to separate out the economic need for a sewer from the environmental need, because it's fairly obvious there is a housing need, as he pointed out, and there is some question about whether there's an environmental need. And then the final thing, of course, is the one time assessment on each of the property owners. Like several of these people in this room, I'm a multiple lot owner and it's going to hurt when I have to pay on 16 lots. I have the fortune of being able to pass it on to my tenants and I've already advised them that I will, so they're not very happy with you folks right now. But I think you probably need to look carefully at all the funding opportunities out there, and there are many, and not get in the habit of going to the property taxpayers. Thank you.

Derik Ellinghouse: For the record, Derik Ellinghouse. I agree with Mr. Larson on a couple things that he brought up. Why just this small area for the Sewer District. One thing he missed, they've got Big Larch campground in there already and there's two campgrounds across the lake, why aren't they included. Why from C Street down is not included, there are a lot of property owners down there. Let's spread out the wealth a little bit. You know, maybe \$5 a month instead of \$7, spread it out. People that own more than one property with nothing on it, they're going to get scabbed and I don't know why, because you want the money for the study. Question. When and if they start doing the sewer down Boy Scout Road and whatever, are they going to put the water system in on top of it too, are we going to get stuck with that. You're nodding your head yes. It's under discussion. I know on our side of the lake there, we've got a lot of weekend homeowners and they're dead set against it, they don't want to pay \$40, \$50, \$60 a month for the use of two days of a week and I think you're going to have a fight on your hands. I'm against it.

Ralph Kloser: There's a lot of talk about the small size of the Sewer District. When the Sewer District was formed, you want to realize that the District that we have is surrounded mostly by State land and the State would have no part of being included in the Sewer District.

Penny Copps: I'd like to respond to that a little bit too. I'm Penny Copps. The study, the Preliminary Engineering Report, does look at an area that's larger than the Sewer District but we have to start with what's legal before it can be expanded. But that will be part of the study that you will be advised you can report on. Also, in order to get those grants, we have to complete the PER study, it's after that where they show the need and the different questions and the income levels and what we can do, requires that we have that report done before we can look at grants, so.

Harry LaFriniere: I'm one of the summer people so I figured I better come. My name is Harry LaFriniere. We started to build a cabin up here in 1951. We've been here 52 years. We wholeheartedly support the \$72 assessment. I spoke to some of our neighbors and some do and some don't, but they'd like to know more about it. One of the things that's happened to us, we pumped out of the lake for a number of years, we've been on the City water for 5 years and it's really a great improvement. The lake has gotten so dirty. Used to be you could go on the dock and look down into the clear water and see the fish, and boy, you got a problem doing it now. In the fall when we take our boat out, there's a scum on the boat and you don't have to scrape it off but you have to scrub it off. Our cesspool has been in there at least 50 years, it's a rock cesspool, and we've expected it to collapse and it's still holding up, but we need something better. The kids swim in the lake, our grandkids, and we worry about that water down there. We know there's a lot more boat traffic, but all these houses that have been built on the lake, they each contribute a little bit to the contamination. I'd like to, if we work together as a community, the summer people and the people that are here year round, we can get the job done and we can build a good wastewater system. We just went through this same thing at Florence and the people in Missoula County ought to be proud that our Commissioners are here, we haven't seen the Ravalli County Commissioners, it's great you folks come up here. Work together and we need the system. I think the growth will show that the system is what we're going to have to have, eventually have and somebody's going to have to pay for it. I got one question, on the map, how does the Double Arrow take care of their wastewater.

Glen Morin stated that they were all on individual septic systems.

Harry LaFriniere: Maybe an idea that they be on this too. Why were they excluded, if I can ask.

Glen Morin: Because we are locked into the District that was formed quite a while ago and the problem enlarging the District isn't as easy as, okay, we can make it bigger. They've already done it and we're kind of stuck. All we can do is one lot at a time.

Vince Chappell: My name is Vince Chappell with the Seeley Lake Water District. I just want to commend the Board for everything they have done so far. Everyone here, commend them for their questions and whatnot. I have sat in on some of the meetings that the Board has had and I do know that the Board is looking at all the options that you folks are talking about, the size, the money. I know they're looking at everything. Nobody wants to pay the big bills, we all know that. Nobody likes paying the big water bills, etc. They're trying to figure out what the options are and what is best for everyone. So, I do commend the Board for what they have done. I am for the Sewer District.

Bob Scott: My name is Bob Scott and I have some questions relative to the handout that you had on the operating statement for 2002-2003. Was this prepared by the District or by the County.

Chairman Carey: By the District.

Bob Scott: Under 2003 Budget, you indicate in there that there were donations of \$19,000 TSEP, \$18,000 for a total of \$34,000.

Mary Ann Morin: Bob, if you look on there, that's a budgeted amount. It hasn't come in, that was just what they projected at the time to come in.

Bob Scott: Alright, so that was what my question is. None of the \$19,000?



Mary Ann Morin: Let me see. For one thing, sorry about the misspelling on "grants," but the donations, the fundraiser gave \$10,450 to the District. That's shown on the other side where it's the operating budget. And then the one on the right side is for the Preliminary Engineering budget and the money has been set in the Seeley Lake Community Foundation account as a 501(c)(3) and so the District has not received that money, even though it's earmarked.

Bob Scott: Is the District going to receive that money?

Mary Ann Morin: As soon as matching grants became available, because that money is specific for matching grants.

Bob Scott: And, so, then what is the status on TSEP?

Glen Morin: We still don't have the money in our hands but we have the commitment from TSEP and I'm not sure.

Commissioner Curtiss: Just to clarify, the TSEP money comes from the State of Montana, is allocated by the Legislature, so that happened during the 2003 Legislature.

Ralph Kloser: And that stands for Treasure State Endowment Program.

Bob Scott: I understand all of that.

Ralph Kloser: And we have a commitment and a contract with them, but they pay that strictly for the Preliminary Engineering Report, the \$15,000, and after half of that report is done, they will reimburse half for the engineering and then when the study is complete, they come back with the other \$7,500.

Bob Scott: Alright, what I'm trying to find out here is if any of the \$34,000 that you're showing in the 2003 budget is going to be coming in. If so, how much?

Ralph Kloser: Well, on the right side of the form, that \$34,000, yes, the Seeley Lake Community Foundation donations, which is to match the TSEP grant and hopeful, this DNRC grant we've got and we do have the commitment on the TSEP, so, yes, the \$34,000 would come in.

Bob Scott: So then, we're going to have \$34,000 coming from these two sources, right?

Ralph Kloser: Yes.

Bob Scott: And then, if you are asking for another \$35,000, that comes to \$69,000 that would be available.

Ralph Kloser: Yeah, sounds like about \$5,000 of it's been spent for operations.

Bob Scott: This doesn't show any expenditure of \$5,000.

Ralph Kloser: It's on the left side, on the left side is the actual operation and it shows the detail and what the money was spent for. We've talking fiscal year July 1 to June 30th and we have money for six months and spent about half of it from the Seeley Lake Community Foundation. It's actually \$4,100 that was spent through June 30th.

Bob Scott: Alright. So if you want to take the \$69,000 and take \$5,000 off of it, that's \$64,000 that you are depending on coming in.

Ralph Kloser: That's correct.

Bob Scott: So then, what I would like to see is a line item breakdown of how you're going to spend \$64,000. There's nothing in this that indicates even what you're going to do with the \$35,000.

Ralph Kloser: No. We can get that for you. The groundwater study, that's \$10,000. The Preliminary Engineering Report is \$40,000, so there's \$50,000 of it right there. And then the balance is operating for this new year and then hopefully we can get some more grants if we need them and then we'd have money to match those grants. All these grants need matches.

Bob Scott: Alright. Do you have a bid of \$40,000.

Ralph Kloser: We have a contract.

Bob Scott: You have a contract for the \$50,000.

Ralph Kloser: \$10,000 for the groundwater study and \$40,000 for the Preliminary Engineering Report with Entranco Engineering in Helena.

Bob Scott: Okay. So, then that leaves \$14,000, a balance here. Do you have any kind of breakdown of how you're going to spend the \$14,000.

Ralph Kloser: \$11,000 of it is for the operation of the District for 2003 to June 30, 2004. That's going to be about \$11,000.

Bob Scott: Alright. This is a pretty confusing piece of paper when we're talking about much more money than what you're showing here. And that's the reason that I wanted to get a breakdown of.

Ralph Kloser: Does that clarify some of it for you and we can get you more.

Bob Scott: Of what you're going to have for income as opposed to what you're going to be spending. And you already have a contract for the \$40,000.

Ralph Kloser: Actually \$50,000. A contract for \$50,000, \$10,000 of it, it's with the same engineering firm, \$10,000 of it for the groundwater study and \$40,000 for the Preliminary Engineering Report.

Bob Scott: Oh, I see. Same firm, \$50,000. Thank you for the clarification.

Commissioner Curtiss: Part of the reason the \$35,000 doesn't show on here is it hasn't been approved yet, so you don't write that into your budget when you haven't approved. But it is confusing.

Bob Scott: We're talking here about \$35,000 extra amount of money that's going to come in here, so someplace on this piece of paper, if these people are going to understand what's going on, some of this should have been put down here.

Ralph Kloser: Well, we're still learning Bob.

Bob Scott: Estimated, whatever the hell you want to call it, it's just proper budgeting or accounting in order to set everything out so that everybody understands that we're not talking about \$35,000, we're talking about \$64,000, and they should have some kind of an explanation for that so they know what they're doing.

Chairman Carey: One of the benefits of having a hearing is to actually improve the way things are done. That's one of the helpful things that comes out of the hearing like this.

Bob Scott: But it would be nice if the handouts.

Chairman Carey: Next time I bet it will be. Thank you.

Bob Jorgensen: I'll try and make it short. My name is Bob Jorgensen. I'm one of the cabin owners on the lower end of the lake. I recently, 2000-2001, built a new log cabin, I call it a log home because I plan to retire up here, so I'm one of those people that some of the others are referring. But on both sides of me are cabins of people who have owned these properties through generations even, in other words, Grandpa was the one that built the cabin out here and the grandsons and daughters and grandkids are the ones that are there now. None of these people have got the kind of money that takes to do the expenses that you're talking about, even \$72 expense per lot that you ask for just one year. I can afford it, yes, and I will have to pay it if I have to, but I feel that none of us on that bottom end of the lake want this. There probably is maybe one or two, but talking to a number of my neighbors, they do not want it and I stand the same way. I understand that the Seeley Lake is part of a whole bunch of lakes that are running off a batholith of sand that you drill down so far and you can't get water. If you drill down 400-500 feet, you think you'll get through the sand, you'll find water, there's no water below there from what I've been told and so we are all stuck with the same thing, we're using lake water or else we're doing like I am, I've drilled a well, I'm using what they call surface water that's filtered through the pit run gravel sand that is around and I imagine that's what all of us are using. I had to put in a septic system in order to qualify to build my cabin and when I built that septic system it was a very expensive thing and Mr. Zuleger, whom I'm sure most of you know who he is, I call him the God of Septic Systems for Missoula County. Anyway, I was told not to talk to him because he makes life very tough for an owner of property. But the builder that I had build the cabin worked with him and I got this thing done. The septic system I have is a 9 foot long, 5 foot high and 5 foot wide coffin that's in the ground with a dam across it and a pump system that you have to have and pump this water after its gone through the septic tank to a drainfield that's 150 feet away and it needs to leg, there are 4 legs and they're each 100 feet and there are very strict requirements that are done for this and this is why people are not building newer homes, they are very expensive to do. I understand, I have a son whose a mechanical engineer, graduated from Bozeman, he looked up his notes in class and he says this septic system I have is for a 20 apartment, apartment house, meaning each apartment has two bedrooms which means 4 people. Now that's how much I have to pay and this is what anybody else has to pay if they want to do something like this. So, I am very strongly against this because my sewer system is in and I'm paid for it. I'm against this.

Joe Morris: I'm Joe Morris and I was involved in a lot of this District formation and at the time we did this, why, most of the people there were on septic systems and we evaluated all the water testing that they've done in Seeley Lake and it had never been found to be polluted. And, so being we have had all these systems in, no pollution, that's what had to do with the boundaries and so those outside the boundary, they're going to have to make their own decisions on what they want to do. I know darn well I won't be able to afford, you know, having a new system put in. We investigated a lot of different systems, the one with the plant and another kind that was just explained. There's a lot of areas in the East now that if you have an acre or two of land you build one just like he was explaining earlier. And then some of them even had a system where you didn't have to have somebody pump it out, you can use that water that's went from your septic system, you know, went into another tank to settle, to water your trees and water your lawn and there was no health problem with that. So I don't quite understand now really why we have to look into some other systems unless everybody that's within this District is really fed up with their septic tanks. Because the septic systems have not been polluting the lake in the previous years and then anyone new coming in and building within this District, they have to meet the Health Department plans. And this is another thing, I cannot figure out why we have to pay for water testing when the lake, the Seeley Lake Water District and Environmental Protection Agency, if they're just being paid to sit in their danged office and think up laws, there's something wrong. They ought to be the ones that are doing this testing, they should be testing the water in the lakes, they should be testing the groundwater and they used to do that and so now, evidently we're getting these expenses put back on us. And way back in the '70's, why basically every county was supposed to have a development plan for all housing, all sewers, all water, what the plans were and I don't know what every happen to them because when I come over on this side the mountains, I went to report to have the electricity and I don't know what all, it took me a whole day to find all the outfits so I could meet requirements and really, it didn't have any. So, now we have the systems in, the septic tanks are good, the lake is lined with a thick layer of bentonite and that's why you can't generally get water when you're next to the lake, because the water isn't going out of the lake through the seepage much, it's evaporation and what goes down the river. I know, well, I'm against the \$75 because my property taxes went up 50%, which I want to talk to you guys about some day and find out what's going on in the County with all the new homes and everything that's going in, this is ridiculous. You tell Montanans to stay in Montana, there's no way you can afford it if our tax keep going. I was paying

\$800 when I came here and now it's damn near \$2,600 and I'm on a retirement salary and I'm supposed to get an increase in, for a living, and you figure it out, it's just about 1.2% or 2% and if anybody can figure out how to live on 2% increase when the cost of living is actually a hell of a lot more than that, you figure what they done, you know, our area and the electricity hasn't done too bad on us, but gasoline and all these other things they're doing is just, and another thing, this tourism deal in Montana. If I go to Kalispell, I'm a tourist, if I go visits my relatives over in Hill County, Blaine or wherever they are, I'm a tourist and I sure as heck don't feel, when I've lived in this State all my life, worked in a lot of the different counties in the State and I'm visiting people I know that have lived here and all that, why am I paying a tourist tax and even a bed tax.

Chairman Carey: Keep in mind, the Board of County Commissioners doesn't make the law, we're not the legislature. We have to live by what the legislature tells us.

Joe Morris: Yeah, but you guys did a good job, you went and you all met in the Western states, is the way I understand and you were against what they're doing now and now that they're doing it, I hadn't heard anybody gripe about it, the nation's handing it to the State, the State handing it to the County and you're dumping it on us. It's not your fault in a way, but you ought to be able to make this machine work the other way back because it wrong. I'm sorry to change the subject, but the whole deal in this thing has been that Montanans cannot afford their expenses that keep being increased because we've never made the money that they've made in other states, we never will, I don't think, make money or do any of the other states, it would be damn nice. And I am not blaming anybody, I love Montana, I stayed with Montana and I knew that I could double my money, triple my money, but I loved it here and I still love it, but I don't want you guys taxing me out either. Okay, change the subject back to the Sewer District. The way it looks now, all we basically have to do is have the Board manage the part that we're in and at the time that we were looking at it, septic systems was the thing that was going to work and there's already the rules set up for developing the new ones, right, is that correct? – septic systems, there's supposed to be, the Environmental Protection Agency, you have to get a permit to put in a sewer system or drill a well or anything now, right, so as long as the ones in the District meet the specifications that they require we should be alright, okay. Now where you're going to run into trouble later if people want to join in ours but I suppose they could form their own like we did.

Penny Copps: Penny Copps again, and I just have a question. Would you feel differently if there was degradation of the water, or if there was signs of.

Joe Morris: Well, the degradation right now is primarily boats and everything beating the hell out of the water and then another deal, right there, this year, it's low and it's hot and all that. But I been drinking the water ever since I been here, my family's been drinking it, my grandkids.

Penny Copps: Okay, if it were scientifically showing that there was degradation, would that make a difference to you.

Joe Morris: Well, some of the systems they use, I wouldn't be, because I been drinking the water all my live, when we had a camp in Great Falls, the City-County Health Department said it wasn't good, well, they were counting the moss and stuff, I never had moss or bugs or anything else kill me drinking water. I may be getting a little ridiculous but when you're thinking of things that raise a thing to be a potential and if the weather stays the way it is, I'm going to get worried for awhile until it starts raining. But I can purify my water, I filter it and I got one of them ultra-light deals that is supposed to zap everything 100% so I hope they're right. We were drinking the water way before they come up with the great light.

Glen Morin: I just wanted to add that the Butte School of Mines, the degradation that they did find is from sewer systems, in the water, at this point.

Joe Morris: Well, then what they should do is go check those sewage system it's coming from, they was supposed to be putting dyes in the sewage system and if yours goes in the lake, you fix it up. See, Bob, everyone of us has put in new systems and I'll be damned if I want to buy another one, you know, I'll buy a new septic tank and I think that it's cheaper than, I do most of my own work except I don't lift the tank in, but when they dig the ground I do all the rest, so, I mean, I don't, I just feel that you can take care of our system and if their study can by to get the money and make sure that they do these checking the systems. There's more health laws in this country then you can dream of and go to the source that's doing it and correct it.

Ray Cebulski: My name is Ray Cebulski. I think we're kind of losing, getting off the subject here. The idea of this meeting is to raise the money to do the study to see if the sewer system is feasible. Now I came here 1961 and walk out on the dock at Seeley and you could see the bottom of the lake, you could see fish, you could drink out of it and I dare you to do that now. Now, if I caused that pollution, you caused it, we caused it, shame on us, that's bad. But, the point you want to really remember that Roger made, if the EPA comes round and tests this lake all around, they don't give a damn whose on it on a septic or what, they're going to say, you put in a sewer system and the cost will be way above where it is now. Thank you.

Tom Morris: I wasn't going to talk tonight, but I've been on this Board since it was formed legally with the Secretary of State in 1992. You folks are the ones that voted for me and you folks are the ones that I've been representing for these 11 years. For these 11 years, this Board has operated with zero dollars coming from the public who formed the District. You people voted in these boundaries in 1992. Either you voted for them or you didn't vote, but all of you here formed this District, whether you voted or not. In the beginning of the District, we, the members of the Board, went to our own pocketbooks, bought stationery, paid for the Post Office Box, all the mailings that we did, any information that we did, public or otherwise, any meetings that we held, we paid for that out of our own pockets. Now I didn't run for the Board this year, I'd love to continue representing you people and I have been and they've been some people who have said it, so I'll say yes, I'm anti-sewer if it's going to cost too much for me to live in Seeley Lake. That's my stance, it always has been. But if we're degrading the groundwater, if we're stopping other people from being able to have a nice place to live, or stopping people from being able to work and make a living, if we're stopping elderly people from having a place to live where they want to live in their last years, then I think we need to think about it again. And what the Board's coming to you tonight with, actually the County Commissioners are coming to you with tonight, is asking each person to ante up \$72 for 11 years. 11 years this District's been here, we asking for \$72 for the very first time. Again, if you look at the Foundation money that was raised, on that board there, the people who want a sewer or at least are interested in finding

out if we need one, they anted up \$39,000. Those people did ante up. And I know that some of you have multiple lots and it's going to hurt. Once out of 11 years, it's a one time deal. That's all I got to say.

Chairman Carey: Okay, seeing nobody else come to the microphone, I'll go ahead and close the hearing now. I don't know, Commissioner Curtiss, is there something you'd like to say.

Commissioner Curtiss: Yes. I'd like to thank the Board for your 11 years of service and I'm sure the community would too. We have received some communication from folks who aren't represented here tonight, but I would like to see a show of hands and if you're a couple that share property, if you could fight over who gets to raise your hand, to see the feeling of the people in the room here as to how many of you are willing to pay \$72 per lot, one time, to see whether or not we can answer the question that Harold Sheets asked a little bit ago, is there degradation of the water and when they do those studies, it does show what the degradation if from, whether it be from gas from the boats or whether it's from septic. They can tell that. Finish the engineering study so you can decide if Seeley needs a sewer and then, if you can afford it. And as to the boundaries, those boundaries could be changed in the future if people petitioned to add onto it and you're right, that anytime you have more people sharing the burden, it reduces the cost and so that might be something that, once you get all the information, you need to make that decision and lobby folks to understand why they might want to join you. So if you could have a show of hands as to how many of you are in support of this one time study to decide if we need a sewer, not to put one in. Okay, and how many are opposed. Thank you.

By a show of hands, more people were opposed than were in favor of the one time assessment.

Chairman Carey: I think in all fairness, the Board of County Commissioners should vote on this tonight rather than postpone the vote. We've seen the show of hands and I will tell you that from my point of view, it's my feeling we don't have an adequate information base to decide whether or not a sewer is in the best interest of this community. It seems to me that though it will be a burden for some folks, \$6 a month for the next 12 months will get us to the point where we will know, on very solid ground, whether or not, in fact, a sewer is desirable and whether or not it's feasible. So, this isn't a vote for the sewer, this is a vote for more information in order to make an informed decision. At least that's my approach. So, I'm going to support the proposal to go ahead and levy the assessment and see where we are a year from now.

Commissioner Curtiss: I'm also in favor of that and I really think that you need to make sure you go out of your way to thank the businesses such as Roger Johnson's business, and others in the community, that have put together, I think that they've really anted up above and beyond the normal call of duty on real short notice for them also to understand this and I think that in another year when the study's done and you can see what the study says, then we'll make a decision. I also am in favor and so thank you for bringing it forward and we will be signing a resolution as to such.

An audience member asked if their show of hands meant nothing.

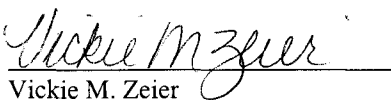
Chairman Carey: It certainly does mean something. It's not as though we've polled everybody in Seeley Lake about the matter and you know, sometimes we see, as the Board of County Commissioners, every week, we see subdivision after subdivision being okayed throughout this County, including this area. Our concern is the impacts of growth on something as precious as our water quality. So, for me it's a prudent thing to do to take a look at it. It is going to cost some money. Personally, I listen to everybody and I don't easily go against a show of hands that wants to go another direction. It's not human nature, I mean, generally you want to sort of just go ahead with most of the Ayes. In this case, I think it's a prudent thing to do to go ahead and make the study and then decide, based on better knowledge.

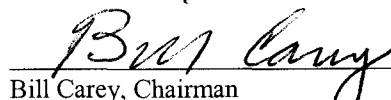
There being no further business to come before the Board, the Commissioners were in recess at 8:50 p.m.

#### FRIDAY, SEPTEMBER 5, 2003

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

Agreement – Chairman Carey executed the STAG grant agreement (awarded August 27, 2003) with the U.S. Environmental Protection Agency ("EPA") for the water infrastructure for the Mullan Road Corridor Sewer Project in the amount of \$1,301,000; Missoula County will be reimbursed for expenses already incurred. The document was returned to Greg Robertson, Director of Public Works, for further handling.

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

#### MONDAY, SEPTEMBER 8, 2003

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was on vacation the week of September 8<sup>th</sup> through the 12<sup>th</sup>.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated September 2, 2003, with a grand total of \$17,430.21. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated September 5, 2003, with a grand total of \$32,908.80. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtiss signed three (3) Claims Lists, dated September 8, 2003, with the following grand totals:

- 1) \$24,892.76;
- 2) \$69,342.34; and
- 3) \$82,166.37.

The Claims Lists were returned to the Accounting Department.

**TUESDAY, SEPTEMBER 9, 2003**

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

Claims Lists – Commissioners Carey and Curtiss signed two (2) Claims Lists, dated September 5, 2003, with the following grand totals:

- 1) \$47,841.79; and
- 2) \$9,435.60.

The Claims Lists were returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated September 8, 2003, with a grand total of \$26,711.58. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated September 9, 2003, with a grand total of \$328,537.24. The Claims List was returned to the Accounting Department.

Plat and Development Agreement – The Commissioners signed the Plat and Development Agreement for Mountain Drive Lots, located in the SW¼ of Section 36, T 13 N, R 18 W, PMM, Missoula County, an area of 2.08 acres, with the owners of record being Michael and Tanya Babbitt. The Development Agreement, dated August 28, 2003, is related to maintaining lots in compliance with the Montana County Weed Control Act and the Missoula County Noxious Weed Management Plan.

Monthly Report – Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Michael McMeekin, for the month ending August 31, 2003.

ADMINISTRATIVE MEETING

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

Contract – Chairman Carey signed Contract #04-07-3-31-011-0) between the Montana Department of Public Health and Human Services ("DPHHS") and the Missoula City-County Health Department for the implementation of the Community-Based Montana Tobacco Use Prevention Program. The total amount shall not exceed \$80,000. The term will be July 1, 2003 through June 30, 2004. All other terms and conditions are set forth therein. The document was returned to the Health Department for further signatures and handling.

Amendment – The Commissioners signed an Amendment, dated September 9, 2003, to the Subdivision Improvement Agreement and Guarantee, and Deed for Reconveyance, between Missoula County and Circle H. Ranch, LLC. (November 5, 1996). This Amendment permits the Sterling Savings Bank to have a first position security interest in the property; Missoula County retains an interest in ten lots via deed restrictions (which are released by installation of the improvements.) The documents were returned to Deputy County Attorney Colleen Dowdall for further signatures and handling.

Interlocal Agreement – Chairman Carey signed an Interlocal Agreement between the counties of Madison, Ravalli, and Missoula, and the Montana Highway Patrol, governing the detention costs for George Harold Davis. This Agreement is retroactive to June 14, 2003, and remains in effect until terminated. All other terms and conditions are set forth therein. The document was returned to Marlene Thompson in the Sheriff's Department for further handling.

Agreement – Chairman Carey signed a Standard Agreement (#03-02-09-09), dated September 1, 2003, between the Montana Department of Transportation (Traffic Safety Bureau) and Missoula County, in acceptance of a grant from the U.S. Department of Transportation for Law Enforcement Equipment. The total amount shall not exceed \$18,500, which will be used to purchase equipment to replace aging in-car video cameras and radar units in Sheriff's Department vehicles. All other terms and conditions are set forth therein. The document was returned to Don Morman in the Sheriff's Office further signatures and handling.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-004 for the Health Department, in the amount of \$8,000.00, reflecting different contracts that needed to be separate for audit purposes.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-005 for the Health Department, in the amount of \$1,000.00, reflecting a needed object code.

Other items included:

- 1) After discussion, the Commissioners agreed to go forward with an auction on September 17<sup>th</sup> of Tax Deed property located on Leo Hansen Road. Other details concerning the auction were also discussed.

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

**WEDNESDAY, SEPTEMBER 10, 2003**

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

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated September 8, 2003, with a grand total of \$10,510.69. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtiss signed two (2) Claims Lists, dated September 9, 2003, with the following grand totals:

- 1) \$53,248.33; and
- 2) \$28,436.49.

The Claims Lists were returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated September 10, 2003, with a grand total of \$35,343.56. The Claims List was returned to the Accounting Department.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

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

Agreement – The Commissioners signed a Memorandum of Agreement between Missoula County and the Missoula Art Museum, reflecting a New Enhancement Request for Fiscal Year 2004 in an amount not to exceed \$25,000. The term will be September 10, 2003 through June 30, 2004. All other terms and conditions are set forth therein. The document was returned to Jenifer Blumberg in the Office of Planning and Grants for further signatures and handling.

Resolution No. 2003-090 – The Commissioners signed Resolution No. 2003-090, dated September 10, 2003, a Budget Amendment for the Office of Planning and Grants in the amount of \$5,000.00, providing the budget authority to pass-through these funds for a Montana Department of Commerce Technical Assistance Grant. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Change Orders – Chairman Carey signed four (4) A&E Architects (with Hydro-Tech, Inc.) Change Orders pertaining to the Missoula County Courthouse Exterior Envelope Restoration Project, as follows:

- 1) \$2,240 for additional balcony handrail work;
- 2) \$3,565 for additional Skim Coat Finish and patching work;
- 3) \$37,395 for additional Terra Cotta patching; and
- 4) \$25,500 for additional prime and finish.

The new Contract Sum including all Change Orders is \$236,700.00. The Date of Substantial Completion is changed to September 29, 2003. The documents were returned to Doreen Culver, Bidding Officer, for further handling.

Signature Page – The Commissioners reviewed and signed one (1) Claims Signature Page for the Larchmont Golf Course Accounts Payable Invoice Register dated September 9, 2003, in the amount of \$26,561.87. The Signature Page was returned to the County Auditor.

Tax Abatement Requests – At the Clerk & Recorder's Departmental Meeting with Vickie Zeier, held on September 10, 2003, the Commissioners approved requests and/or letters regarding the following:

- 1) To approve a request from Real Log Homes to waive penalty and interest paid on 2002 2<sup>nd</sup> half real estate tax bills for Taxpayer ID #3190104 & #1861908;
- 2) To deny a request from the Bennett Law Office for a refund of taxes paid for renewing title #E937034, as there was no error in processing the paperwork; and
- 3) To approve a request from Charles Lee, of City Transfer, to waive penalty and interest for Taxpayer ID #888504.

#### PUBLIC MEETING – September 10, 2003

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

#### Pledge of Allegiance

#### Public Comment

Phyllis Jamison: It's wonderful that the Animal Control staff and animals have moved into their brand new facility, paid for by Missoula City and sitting on Missoula County land. But I wonder if the Missoula County Commissioners are aware that no County cats are being allowed into the new facility. Elaine, and I don't know her last name, it begins with an "S," the interim director of Animal Control, conducted a public education show on television, or an interview on television on August 18th on the morning show, stating that no County cats have been or will be allowed to be admitted into the new shelter, because there is no law requiring Animal Control to admit County cats. Elaine acknowledges that for years Animal Control had a general policy of not admitting cats to the shelter, except with a few rare exceptions, but that changed when the City passed the Cat Ordinance requiring Animal Control to accept all homeless cats, all homeless City cats. Elaine said on the TV show that since they are not required by law to accept homeless County cats, they are not going to. I have personal experience of that, myself, last week when I trapped a feral cat and took it to Animal Control,

and it is a nice facility, it was my first time over there, I deliberately haven't gone over there too quickly with cats because I didn't want her to feel overwhelmed just opening her new facility, but I did take one cat in last week and the first question that Elaine asked me is, "where did you trap that cat," because she said, "if it's a County cat, you have to turn around and take it back and put it in your car and take it out of here, you can't drop off a County cat here." That means all County cats are being left to breed uncontrollably and to suffer in the elements and to spread contagious diseases and also to injure people, because citizens sometimes will not take a cat to the Humane Society, especially since the Humane Society often charges a drop off fee. Many people will just turn a stray cat loose or not trap it in the first place, rather than risk having to pay a drop off fee, which can be substantial, depending on the circumstances. And just on one final point here, last year and the year before, I talked to a number of emergency room personnel, nurses and other technicians that had to test my blood and stuff because I'd received a serious bite, and they all state without exception, including the doctor that treated me, that cat bites are far more serious and dangerous to humans than dog bites are. I read an excerpt last year or the year before to the Commissioners regarding a Clinton lady that had to be hospitalized because of a stray cat bite. Because of teeth, the nature of the bite, the infections are much deeper and much more serious and they race up through the bloodstream much more quickly and antibiotics today don't catch them all the time so people usually have to be, many times have to have an I.V. treatment and quite frequently have to be hospitalized, and these cat bites are much more common than people realize. I talked with medical personnel at Community Hospital and St. Pat's both, say that they treat several people a month at least, that's minimum, and then that doesn't even include the First Care facility, of people that have been injured by these stray cats, so that if Animal Control is not going to be accepting homeless cats into their facility, I would think the County then is going to be liable, or could be liable, for these very serious infections people are suffering and any measures that people may have to take to protect themselves from these cats, like erecting fences and all that, and I don't, you know, hopefully, we'd never get to that, we don't want to even think in those terms, but there is a liability there and I just wondered if the County Commissioners were aware that Animal Control is not accepting or allowing any County cats to be accepted into their facility, to the brand new facility.

Boyd Lambson: I am questioning the County's thoughts on what they're going to do with the inspections, building inspections, coming up.

Chairman Carey: Right now we're taking a look at what would be appropriate, if anything, and we've hired a consultant to give us some advice on the matter, a retired building code inspector. Right now, we're considering, we haven't acted on this by any means, but we are considering taking over what the State does and we'll do it County wide. We're not considering adding anything to what the State does, but we're looking at that possibility, whether it's feasible for the County to do, and in the public interest.

Boyd Lambson: Have you abandoned the idea of turning it over to the City of Missoula to do the inspections.

Chairman Carey: We're looking at the possibility of the City doing it for us under contract for a certain period of time so that we can basically gear up to take it over. We're just looking at that, it might be the most feasible, cost effective thing to do.

Commissioner Curtiss: And we will be holding a public hearing before we make that decision.

Boyd Lambson: I, being a plumber, am 100% against giving the City anymore. You might check with Kalispell also, they tried it and it didn't work. I was talking to some people last week and they said if the County Commissioners do it, they'll be new County Commissioners at the next election.

#### **Routine Administrative Actions**

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$1,192,486.04. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

#### **Hearing: Petition to Vacate a Portion of Old Blue Mountain Road**

This is a petition to abandon a portion of "Old road in Road Book 1, Page 46, Sheet 116, bounded on the south by the southerly line of Tract 12 A-2 as shown in Wornath Orchard Tracts Subdivision, Tracts 12 A-1 and 12 A-2, records of the County of Missoula, State of Montana, and bounded on the north by the southwesterly right-of-way line of Blue Mountain Road as shown in said subdivision, located in Section 2, Township 12 North, Range 20 West, Missoula County, Montana."

The reasons for the request are as follows: 1. The right-of-way is no longer needed.

The following landowners have been notified: USA McDonald, James M. McDonald and Blue Mountain Business Center LLC.

Chuck Wright, Assistant Public Works Director, stated this was cleaning up a problem that occurred several years ago. It is to make sure the Old Blue Mountain Road gets vacated. It was vacated previously but in an inappropriate location and the entire 60 feet was not vacated. It is mostly a paper work matter and it requires a site inspection before a decision is made.

Commissioner Curtiss stated that by law, one County Commissioners and the Surveyor or his designee must conduct a site inspection. After the inspection, a report will be given, then a decision can be made. The inspection can be conducted so that the decision could be made next week. She has received a couple calls on this petition. To clarify, often times a right-of-way that shows on a map doesn't line up with the road. That is the case in this situation.

Chairman Carey opened the public hearing.



Dick Ainsworth, PCI, stated that he was representing the owners of adjacent property. When this road was vacated a few years ago, they thought the problem had been taken care of. However, Public Works does not completely agree, so this petition will take care of the rest of the road. His client is agreeable with the request.

Chairman Carey closed the public hearing and stated that a site inspection would be conducted and the Board would make a decision on the petition at the next Weekly Public Meeting on September 17, 2003.

**Hearing (Certificate of Survey): Garrard 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 49-A2 of COS 5230 located in the northeast one-quarter of Section 17, Township 14 North, Range 20 West.

Robert Che Garrard and Tonia D. Garrard have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 10 acres in size located near Missoula, Montana. Robert and Tonia Garrard propose to create one approximately six acre parcel for transfer to Tonia's father, Fred Allen Decker, for residential purposes and keep the remaining approximately four acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 5230	2002	Mortgage Exemption	Robert Che Garrard	
COS 4387	1994	Boundary Relocation	Harry J. Schweigert	

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act, except as listed below:

COS 5230    Construction Mortgage    January, 2002

Commissioner Carey opened the public hearing.

Robert Che Garrard was present and came forward to answer any questions the Board may have.

Chairman Carey stated that it is the responsibility of the Board to determine if this is really a family transfer or if it might be an attempt to evade the subdivision process. Could Mr. Garrard assure the Board that he intended to transfer this parcel to his father-in-law.

Robert Che Garrard stated the intention was to transfer this parcel to his father-in-law. His father-in-law was present if the Board wanted to ask him any questions as well.

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

Commissioner Curtiss moved that the Board of County Commissioners approve the request by Robert Che Garrard and Tonia D. Garrard to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss stated that Mr. Garrard would receive a letter of approval for the division of land. Obtaining all necessary permits and approvals for any future construction on the site would be the responsibility of the owner.

**Hearing (Certificate of Survey): Halverson 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 as Tract C of COS 2484, located in Section 8, Township 12 North, Range 17 West.

Ella Halverson has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 20 acres in size located near Milltown, Montana. Ella Halverson proposes to create one approximately five acre parcel for transfer to her daughter, Dayle Hill, for residential purposes and keep the remaining approximately 15 acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 2484	1980	Boundary Relocation	Halverson/Hughes	

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act, except as listed below:

Boundary Relocation    November 19, 1998

Ella Halverson was present and came forward to answer any questions the Board may have.



Chairman Carey stated that it is the responsibility of the Board to determine if this is really a family transfer or if it might be an attempt to evade the subdivision process. Could Ms. Halverson assure the Board that she intended to transfer this parcel to her daughter.

Ella Halverson stated the intention was to transfer this parcel to her daughter.

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

Commissioner Curtiss moved that the Board of County Commissioners approve the request by Ella Halverson to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Chairman Carey stated that Ms. Halverson would receive a letter of approval for the division of land. Obtaining all necessary permits and approvals for any future construction on the site would be the responsibility of the owner.

**Consideration: Kane Estates (2 lots) – Old Highway 93 South, Carlton Creek area**

Liz Mullins, Office of Planning and Grants, presented the staff report.

Ester and Kenneth Kane, represented by Rebecca Weaver of PCI, are proposing to create Kane Estates Subdivision. The applicants are proposing a 2 lot residential subdivision on 9.91 acres. Each lot is approximately 5 acres in size. The property is located south of Lolo and accessed via Old U.S. Highway 93 South. There is an existing home on proposed Lot 1.

The property is unzoned. The Lolo Regional Plan 2002 designation is Rural Residential, which has a recommended maximum density of one dwelling unit per five acres. The overall density of the proposal is approximately one dwelling unit per five acres.

Slopes greater than 25% have been designated as "No Build Zones" on the face of the plat. A Development Covenant is being proposed which addresses driveway standards, Wildland/Residential Interface standards, wildlife and weed management.

There are 2 variances being request. The first is from the requirement for a system of pedestrian/bicycle circulation for the subdivision. The Office of Planning and Grants recommends approval of the variance request. Public Works supports the variance request due to the lack of existing facilities within proximity of the subdivision. Pedestrian facilities are located along Highway 93 South, less than 200 feet from the eastern boundary of the subdivision. There is a statement on the plat waiving the right to protest an RSID/SID for future road improvements to Old U.S. Highway 93 South, including non-motorized facilities.

The second variance is to allow for reduced road width from 32 feet to approximately 24 feet for Old U.S. Highway 93 South. The Office of Planning and Grants recommends approval of the variance request. Public Works noted that a two lot subdivision would not contribute sufficient traffic to warrant increasing the width of the private portion of Old U.S. Highway 93 South. Old U.S. Highway 93 South is well constructed to highway standards now, serving local traffic.

Two conditions of approval include final plans for water supply for fire protection purposes to be reviewed and approved by the Florence Rural Fire District, and an amendment to the Development Agreement to state "Montana County Weed Control Act."

Chairman Carey asked for public comments.

Dick Ainsworth, PCI, stated that Becky Weaver from his office is the staff person handling this project but was unable to attend as she was injured in a soccer game last night, so he was standing in for her. The Kanes are present today and are in agreement with the conditions as recommended.

Boyd Lambson asked about the water requirement that was mentioned.

Liz Mullins stated that Subdivision Regulations require a mechanism of providing a water source for fire fighting purposes, which could be one of the following: municipal water system, a well with 350 gallon per minute flow and a minimum 2,000 gallon storage, a storage tank or cistern with fire hydrants, ponds and rivers, or residential sprinkler systems.

Boyd Lambson stated that was required on splitting a small piece of property like this.

Liz Mullins stated it might not be required if the Fire Department or District is satisfied with the current provision for providing water for fire fighting purposes.

Boyd Lambson stated that he is an adjoining property owner and less than 200 feet from this property he has a well that the Fire Department uses for refilling their trucks. The insurance group that rates fire districts have metered the well and say that it is free flowing, putting out more than 300 gallons per minutes.

Commissioner Curtiss stated that fire agencies are asked to comment on proposed subdivision within their jurisdiction. The Florence Rural Fire District did not respond on this proposal so the condition is there to make sure that water is provided. The applicants are fortunate that Mr. Lambson has a good well close by.

Boyd Lambson stated that a new well could be required.

Commissioner Curtiss stated that could be one of the applicant's choices if there wasn't a good water supply close by.

Boyd Lambson stated the Fire Department could request that.

Colleen Dowdall stated the Fire Department could require that, but it is unlikely they would for a two lot subdivision. The Florence Fire District has in the past responded that they use watertenders to fight fires. These regulations apply all over the County and every Fire District has different mechanisms they use to supply water. Each District must be asked how they provide water and if the Florence District had responded and said they use a well right next door, the condition probably wouldn't have been required.

Commissioner Curtiss stated the condition was included mostly because the Fire District did not respond. There was a subdivision approved recently way up Miller Creek and quite far from the Fire Department who could not respond within 20 minutes. A situation like that would need a source of water for fire fighting. It is a standard regulation that is applied to all subdivisions.

There were no further public comments.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Section 3-2(8)(A)(iv) of the Missoula County Subdivision Regulations that requires all subdivisions outside of the Urban Growth Area and located on public roads to provide a system of pedestrian/bicycle circulation; and approve the variance request from Section 3-2(3)(B) of the Missoula County Subdivision Regulations to allow for a reduced road width from 32 feet to 24 feet for Old U.S. Highway 93 South, both based on the findings of fact in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the Kane Estates Subdivision, based on the findings of fact and subject to the conditions in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

#### **Kane Estates Subdivision Conditions of Approval:**

##### **Fire**

1. Final plans for water supply for fire protection purposes shall be reviewed and approved by the Florence Rural Fire District prior to final plat approval. If a Development Agreement is required, it shall be reviewed and approved by the County Attorney's Office and Florence Rural Fire District, filed prior to final plat approval, that dictates the source of water supply and a mechanism for enforcement. *Subdivision Regulations Article 3-7(1).*

##### **Noxious Weeds**

2. The Development Agreement shall be amended to state: "Montana County Weed Control Act" prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*

#### **Hearing: Halling Farms Rezoning (Mullan Road, west of Reserve) – Postponed from July 16, 2003**

**Monte Sipe**, Office of Planning and Grants, presented the staff report.

This is a request from Crowne Brook Investments, represented by PCI, to rezone property located to the north side of Mullan Road, approximately one-quarter mile west of the Reserve Street/Mullan Road intersection. The property is south of the Hellgate Meadows Subdivision and Special Zoning District and west of Carmike Cinema. The original proposal was presented to the Planning Board on December 17, 2002. The Planning Board tabled the project in order to give the applicant time to consider issues of density, transportation connections and traffic congestion on Mullan Road and Reserve Street. The re-submittal was presented to the Planning Board on July 1, 2003. At the outcome of this meeting, Planning Board recommended denial of the project by a vote of 4-1 with 2 abstentions.

The property proposed for rezoning contains six tracts of land and approximately 33 acres. The properties currently contain single family dwellings with garages, outbuildings and barns, with a density of 1 dwelling unit per 5.5 acres. The property is currently zoned C-RR3 ("Residential" – 4 dwelling units per acre). The 1998 Missoula Urban Area Comprehensive Plan Update designates the area proposed for rezoning as "Suburban Residential" – 2 dwelling units per acre. The applicant is requesting rezoning to Halling Farms Special District with two Sub-Districts, Multi-Family and Neighborhood Commercial. The applicant has stated that the reason for the rezone request is a change in surrounding uses and also comments that the proposal is to provide an important transition between the Highway/Heavy Commercial district to the east and the single family uses to the west. The development pattern and land use in the vicinity of the proposed rezone area has increased in intensity compared to the land use designations specified in the 1998 Urban Area Comprehensive Plan Update. Mixed-Use (residential and commercial development) is planned for land to the north in the recently approved Hellgate Meadows rezone and subdivision. Highway/Heavy Commercial and Community Commercial uses are expanding east of the area. Wal-Mart has developed southeast of the area. To the west, a single family residential, small scale Multi-Family (four and six units) and a small portion of Neighborhood Commercial uses limited to 2,000 square feet of floor area, are proposed as part of the Hellgate Meadows Special District.

Staff is recommending denial of the request based on the findings of fact in the staff report.

The Neighborhood Commercial Sub-District would apply to Tracts 1-4 (approximately 20 acres) and permit a combination of uses including day care centers, schools, personal care facilities, personal services, retail commercial, public or private offices and limited residential development on Tracts 2-4. This Sub-District sets requirements for a maximum footprint of 40,000 square feet for structures with 25 foot front and rear setbacks and 10 foot side yard requirements. The maximum height of buildings within this Sub-District would be 40 feet.

The proposal for 40,000 square foot maximum footprint for commercial structures is larger than those currently located directly to the east. The Neighborhood Commercial Sub-District allows uses and building sizes similar to Community Commercial or Heavy Commercial. The C-C1 Neighborhood Commercial District in County Zoning specifies a maximum height of 30 feet and maximum floor area of 2,500 square feet; except retail food stores, which allow 3,500 square feet.

Minimal design standards are incorporated into the Sub-District standards to provide for attractive building design that is compatible with the goals and objectives from the Comprehensive Plan or to what has been approved for development to the north and west of this site. The Comprehensive Plans recommends the following for commercial and industrial uses within the Plan Area:

1. Support development of Neighborhood Commercial centers which satisfy community-wide goals and are designed to mitigate negative impacts on residential neighborhoods.
2. Allocate land for commercial use which distinguishes between diverse land use needs and impacts and create appropriate performance standards which recognize the varying intensity of the use and ensure compatibility among uses.
3. Create smooth transitions from commercial to non-commercial uses.
4. Propose design standards to achieve the goal of creating thriving commercial districts which are characterized by convenience, are attractive in appearance, are compatible with adjacent land uses and in which the mixture of individual uses complement one another.

The proposal does not address which architectural building design standards would apply to the above ground floor dwelling units permitted on Tracts 3 and 4. Differences in the standards include the required roof pitch, the number of gables and breaks in walls that face residential development every 50 feet.

The Multi-Family Sub-District (Tracts 5 and 6) permits a 218 unit Multi-Family residential development on 10.92 acres, a density of 21 dwelling units per acre. The Multi-Family development is proposed as three-story structures on the west side (Tract 6) with a permitted height of 42 feet, similar uses are permitted on Tract 5 and permitted on Tracts 2-4 with a specific number of units allowed. This proposal for Multi-Family residential units provides for only one type of housing; one and two bedroom units within two and three story structures. The standards proposed do not add to the unique values of the neighborhood and the rural area.

The applicant describes the proposal as a mixed-use development. The potential for limited Multi-Family residential development for Tracts 2-4 has been incorporated into the Neighborhood Commercial Sub-District. By incorporating residential uses into the Commercial district, the gross density of the overall 30+ acre site has gone from 8 dwelling units per acre to 11.4 dwellings per acre. The residential density has been modified from 23 to 21 dwelling units per acre for the Multi-Family Residential Sub-District.

The approximately 21 dwelling units per acre in the Residential Sub-District far exceeds the Comprehensive Plan designation of 2 dwelling units per acre, the current zoning of 4 dwelling units per acre and the master planned Special District to the west and north, which allows residential densities ranging between approximately 5 and 13 dwelling units per acre. The design standards do not provide an adequate buffer between the scale and bulk of the dense development along the western edge of the zoning district from development to the north and west and between the Residential and Commercial Sub-Districts.

The subject property is accessed from Mullan Road on the south, a two lane road with poorly graded shoulders and no pedestrian/bicycle facilities. At the time of the application and early agency comment, and according to a 1999 traffic count, there were approximately 10,000 average vehicle trips per day (ADT) on this portion of Mullan Road. According to information gathered for the 2002 Transportation Plan Update, ADT is now 16,700. Traffic volumes increased significantly following the completion of the 4 lane improvements on Reserve Street. Other information gathered in the transportation planning process revealed that Reserve Street and Mullan Road is a high accident intersection with a volume to capacity (V/C) ration of 1.20 or greater, which is a Level of Service (LOS) E/F. Mullan Road west of Reserve Street also operates at LOS E/F.

The applicant proposes a phasing plan that designates the Multi-Family development on Tract 6, approximately 63% of the Multi-Family, as the first phase. Vehicle travel from this phase will access Mullan Road until such time as development to the north provides another access. Traffic from this development eventually traveling south will either enter the Reserve Street/Mullan Road intersection from the west on Mullan Road or from the north on Reserve Street.

The original application packet included a general traffic narrative and analysis for the Multi-Family zoning and a conceptual road plan for the commercial area. The traffic analysis is limited to the question as to whether a right turn lane on Mullan Road into the Multi-Family Sub-District is warranted, particularly at peak hours. The proposal includes a right turn lane from Mullan Road into the Multi-Family development. The zoning standards do not require any improvements for a bus pull out or a turn lane to be constructed as development occurs within the zoning district. Greg Robertson, Public Works Director, expressed concern that the applicant did not provide adequate information for evaluation of the traffic impacts. He described development at this location as "difficult in terms of traffic." Steve King, City Engineer, also expressed concern that the rezoning request does not analyze traffic impacts.

Access from the north is proposed via Union Pacific Street, O'Shaughnesy Street and an unnamed road right-of-way, the location of which is yet to be determined. Preliminary approval of Hellgate Meadows Subdivision was conditioned upon dedicating right-of-way for two additional street connections from Union Pacific/O'Leary Street to the southern boundary of the subdivision. Roads were not required to be developed with street improvements unless a dedication is made to continue the public right-of-way to the south within two years of the filing of Phase III of Hellgate Meadows. The application packet does not address if legal access has been or can be acquired from the north and the zoning standards do not address these issues. This access is proposed as a 20 foot, 6 inch wide paved road with no pedestrian/bike facilities within a 30 foot right-of-way for Phase I.

A road connection between the Multi-Family development and the Commercial development is planned by the applicant to be within a 30 foot right-of-way. Road right-of-way required for City streets and County roads is 60 feet. A link to the west allows the development of a complete grid transportation network between this proposal, Hellgate Meadows on the north and the Flynn property to the west. Increasing the right-of-way width to 60 feet would provide a grid that is suitable for use by the public.

Development is proposed in 5 phases, with Phase 1 being on the far west (Tract 6) and Phase 2 being on the furthest east tracts (Tracts 1 and 2). Phases 3, 4 and 5 will develop from west to east. The phasing plan is conceptual and the standards do not specify which tracts will develop at any specific date. Steve King pointed out that if the phasing plan is followed, dedication of rights-of-way will be disjointed and disconnected until the last phase is completed.

Traffic intensity has not been adequately identified. The zoning standards do require that as lots are developed, that right-of-way dedication occur. However, no legal mechanism exists in zoning to compel the dedication to occur. The proposed zoning does not provide adequate standards for access. The applicant has not addressed the impacts of the substantial increase in density on off-site roads or the improvements required on Mullan Road, such as road widening, turn lanes, non-motorized facilities or transit pull outs made necessary by this proposal. The rezoning has the potential for significant impacts on traffic in the area and increased congestion in the streets. Failure to provide for an adequate continuous connection from the Multi-Family Sub-District to the Commercial Sub-District will likely result in an increase in traffic through Hellgate Meadows or onto Mullan Road for access between the two Sub-Districts. Traffic circulation and concerns of congestion in the streets is further compounded by the proposed disjointed phasing plan proposed for the subject property. Current road infrastructure is not available to handle this level of density, resulting in an increase in congestion in the streets.

Parking is proposed for the outside edge of the residential area to provide a transition to adjacent uses. Establishing a greater distance between the parking and the property line and providing additional landscape berms would create a better transition from high density to the more moderate development approved to the north. The standards proposed by the developer do not include standards or setbacks for parking or building standards that would reflect an effort to provide buffering and transition. The applicant's Multi-Family site plan for Tract 6 shows a proposed trail/walkway system. The zoning standards for the Multi-Family Sub-District requires all walkways to be a minimum of five feet wide, constructed of concrete, asphalt or gravel and installed similar to that shown on the site plan included with the special zoning district. A 25 foot right-of-way for pedestrian/bicycle connections is proposed with a requirement that Lots 1-4 provide a similar connection along the frontage of those properties as well. There is no requirement in the zoning standards that the easements be improved or maintained.

The property is located within the Urban Growth Area, which coincides with the sewer service area for the City of Missoula. Sewer is readily available in this area. The requested development densities require City of Missoula utility service. The property cannot be developed to the intensity requested without significantly impacting City infrastructure. The properties requesting zoning are completely surrounded by the City and access is from City streets.

Carla Krause, annexation coordinator for the City, stated: "Tracts 3-6 of Halling Farms are in the RSID 8474 boundary (Mullan Road Corridor Interceptor Sewer Project) and are subject to its benefits including annexation restrictions defined under the Mullan Road Corridor Sanitary Sewer Project Interlocal Agreement. One of the provisions of this agreement is that new development proposals initiated and new development occurring after April 3, 2002, are not eligible for delayed annexation, but are subject to annexation at the City's discretion. The City's current policy (Resolution Number 6570) for sewer to non-City property requires up-front annexation. Based on the above, any request for sanitary sewer to serve new development on these tracts will require up-front annexation to obtain rights to connect to the sanitary sewer system."

The submittal packet includes a phasing plan with five phases and a conceptual transportation plan. The zoning standards do not specify a timeframe for development of each phase or standards for provision of infrastructure within each of the phases. Without detailed phasing and infrastructure plans, Missoula County cannot determine the full impacts of this proposal as a transitional development. The high density, Multi-Family portion and/or commercial to the east could be constructed without any development on the middle tracts (Tracts 3 and 4). This could create "islands of development" with rural land and single family dwellings left in the middle. The zoning proposal does not have standards to protect the value of the residential uses during the interim period.

Staff recommends that the rezoning request for the property legally described as Tracts 1-6 of Halling Farms Subdivision from C-RR3 to Halling Farms Special District, be denied, based on the findings of fact in the staff report. Staff has been receiving additional information and proposed revisions from the applicant and responses from agencies up until yesterday at 5:00 p.m. On July 11, 2003, staff submitted a letter from the applicant's representative including notification that any submittal changes would need to be received by OPG 30 days prior to the Board of County Commissioners hearing to have time to get agency comment and review the information. Because of the late date in the process for receiving this information, staff has not reviewed this information in any detail.

Chairman Carey opened the public hearing.

Gilbert Larson, PCI, developer's representative, stated that his clients are requesting approval of this special zoning district. At this time, it is only for zoning, which has been one of the major issues. Because this deals with only zoning and not subdivision, there are not as many tools in place to create safety nets. He would like to focus on the changes made since their last meeting six weeks ago. The submittal has not changed from what was presented in May in terms of the standards, phasing and what is being proposed. They have concentrated on working directly with the agencies as encouraged by OPG, to try to resolve some of the major issues. He is certain that much of what is included in Monte's report may have been accurate a few months ago but is not accurate today. There have been some significant changes in regard to the agencies, in particular Public Works, that significantly alter how this zoning may be approached by the County. There are six owners who are reacting to what's happening around them, each wants to protect their property values for different reasons. Lot 1 is owned by George Jensen and what he has seen happen recently is that his property fronts on the intersection that has become the main access to Wal-Mart. His property abuts Wal-Mart. Bob Lake has Home Depot and Sportsman's Warehouse abutting his property. Those three businesses have facilities over 100,000 square feet that are adjacent to these owners. Lots 3 and 4 are owned by Roy Marceau and Al Koschel and they have just had a 39 unit apartment building erected right across their back fence in Hellgate Meadows. The 39 units are constructed on a total of 50,000 square feet, with a density of 34 units per acre. Julio Morales and Joe Crawford own Tracts 5 and 6. They have seen zoning approved recently that allows townhomes up to six units on lots as small as 3,000 square feet, again right across their property line. There have been significant changes in the area. Two of the owners want to continue to have a few cows and stay in the County and not change, but they recognize that when they pass on, whoever takes over the land isn't going to continue keeping a few cows. They have been impacted and want the value of their

property recognized when they pass it on to their heirs. Although they don't want to currently develop, they want to make sure they have provided for their children and there will not be any problems dealing with this land. It is a diverse group but they recognize that if they group together, they could look at issues like transportation and infrastructure and transition and zoning. They recognized that if the six of them could come together, it would be in everyone's best interest, not just theirs, but the community and the County as well. He commended them for their foresight. He has been dealing with smaller tracts of 5 or 10 acres. He fears that if this is denied, some of the tracts will come forward with small proposals with cul-de-sacs. He would like to see that avoided and this proposal presents that opportunity. He felt this was a very good plan that meets with most, if not all, of the County's goals. It is noteworthy to mention that they have held several public meeting and there has not been one person speak in opposition to the proposal. He has been doing land planning for a lot of years and it is rare to deal with commercial and multi-family development and not have opposition. The key issue has been infrastructure and that has been dealt with in the last six weeks. The problems of water were easy. Water lines are available on both sides of Halling Farms and written assurance has been received from Mountain Water that full service will be available, including fire protection. The Fire Department has confirmed that they have no concerns or objections to the zoning. Some of the issues on surrounding land that dealt with narrow streets and poor access are not present with this zoning proposal. The Fire Department had significant concerns with Hellgate Meadows. Those concerns are not present with Halling Farms because of the proposed street widths and grid patterns. There is one major concern with sewer. Sewer is available and there is a main line in place through the heart of the zoning proposal. The only concern that remains is that before any connection can be made to that line, the property will have to be annexed to the City of Missoula. All six owners have agreed to that from the beginning. The bigger issue involves traffic. Those have been resolved. They have been working with Greg Robertson and Colleen Dowdall to try to resolve some issues. One issue was that normally with zoning, right-of-way is not created. They have found a way to conditionally dedicate the right-of-way so that upon development, that right-of-way becomes of record or at the end of a specific time period, in this case, 10 years. At the end of 10 years, all rights-of-way would become automatically dedicated and there would be no gaps between phases. A way has been found to guarantee the complete grid in place within a reasonable time limit. Another major issue was traffic mitigation. With a subdivision, there can be a direct mitigation of traffic. There is no mechanism to do that with zoning. All six owners have decided to sign an agreement with Public Works for a specified voluntary contribution to the Mullan Road Corridor Traffic Mitigation Fund. They are willing to sign the agreement prior to the zoning being adopted. The two key objections with traffic and rights-of-way have been resolved. With that, Public Works has agreed to withdraw all of their objections to the rezone of Halling Farms. That is the most important change from the previous meeting, there are now no concerns from Public Works. He has met with Steve King who has also agreed to withdraw his concerns with regard to traffic. Mr. King still has objections and feels this should be dealt with through the City. There are two owners who don't want to change, they have cattle and don't want to be in the City and they won't change their minds. They have agreed for all of the City standards to be in place for this zoning but they don't want to be annexed until development occurs in the future. The mechanism is present to request the rezoning through the County with the development occurring later, governed by the City. Another issue was providing pedestrian facilities. They have agreed to dedicate a 25 foot non-motorized easement along the frontage with Mullan Road. In speaking with both City and County, there weren't plans in place yet for what should happen within the Mullan Road Corridor. They thought dedicating the easement would be sufficient but have continued to hear concerns regarding the 25 foot easement. They have no objections to including within the standards to improve the walkway within the easement. The true value is in dedicating the easement. To actually construct the walkway is a small cost relative to this project. They are willing to amend the application to include construction of the walkway at time of development of each of these six tracts. They had tried to add some variety as to the scale and type of buildings and seemed to hit the opposite of what was intended. On Tract 6 they had included three different sizes of building – three 24-unit buildings, one 30-unit building and one 36-unit building – for a total of 138 units. Concerns have been raised about the scale of the two larger buildings. They feel it is in harmony with the neighborhood, there is a 39-unit building across from Lots 3 and 4. They would be willing to reduce that so all five building are 24-units. It would reduce the density on that tract to 120 total units. The building and site plan would remain as submitted with no changes to the roads or parking, just a reduction in the scale of the buildings. He believes the six owners have done everything asked of them. What they have done has made the project more compliant and less intense than what has already been developed just across their fences. They have gone far beyond what should have been required and should be rewarded for their efforts. Six owners of different ages and different desires have come together to submit a reasonable plan. He would ask the Board to approve the zoning; it makes sense, it's in the best interest of the community, the best interest of the owners and there has been no opposition. They understand there will need to be further processes, building permits, zoning compliance, City annexation, construction of infrastructure. None of those are concerns that need to be dealt with now as part of the zoning.

Commissioner Curtiss stated that some new ideas have been presented that, as Monte said, haven't had time to be considered. Her biggest concern is that the special zoning district has proposals for building which are way too big, similar to what are referred to as "Big Box Stores." That is not transitional, it just moves the big box stores down Mullan Road. She has concerns about building footprints and heights proposed. Even though they have made proposals for certain items like traffic mitigation on Mullan Road, it doesn't change anything on Mullan Road. By Missoula County definition, Neighborhood Commercial is 2,500 to 3,500 square foot buildings, not 40,000 square feet. The Board has received phone calls in opposition to this proposal. She does not feel this is what should be extended down Mullan Road.

Gilbert Larson stated that during initial discussions, the question was raised as to what would be appropriate. It is hard to determine as each of these six owners can look across their fence and see a building footprint larger than what they are proposing. The 39 unit apartment house constructed is larger than anything being proposed. Home Depot, Wal-Mart, Sportsman's Surplus, they are all larger than what is being proposed. Carmike Cinema is approximately the same size as what is being proposed with much more intense usage. Hellgate Meadows allows six-plexes on a minimum lot size of 3,000 feet, with a density greater than anything being proposed. If a 24-unit building is not appropriate, he would find it hard to explain to his clients why not. He felt that a 36-unit building was appropriate. They have agreed to reduce it to 24-unit buildings but did not have a good justification for why a 36-unit building was not allowed when the owners can point out their window to something even larger and ask why they aren't allowed to do that. All that can be done for Mullan Road is what is available. They have met with Public Works and have their concurrence that the plan to mitigate traffic is acceptable at this time. It will provide an important link to the transportation grid to provide an alternate way to travel through the neighborhood, rather than use the Mullan Road/Reserve Street intersection. They wanted to convey that this will be a mixed use neighborhood, it will have neighborhood and commercial uses mixed. It also provides a transition between the uses on the east to the uses on the west. The proposal is about one-third the scale of buildings right next door.

He understands that there is intense development in Halling Farms, but it is less intense than what is next door. He has a hard time telling the owners what is appropriate.

Chairman Carey stated that the very nature of the proposal cannot be done unless it is in the City. It has to be annexed to be developed.

Gilbert Larson stated that was correct, in order to develop, it has to be annexed.

Chairman Carey stated that his concern was that the County Commissioners should defer to the City in this matter.

Gilbert Larson stated they had prepared a City proposal but two of the owners would not sign it. They will not have anything to do with annexation. The City wholly surrounds the proposal and could have forced annexation and reviewed it themselves, but they didn't want to take that opportunity, it was their lowest priority of wholly surrounded areas. They were not able to work with the City. His personal opinion is that it does not require these two owners being annexed to get zoning. The County has the mechanism and he was not comfortable with telling those two owners they had to become City residents to look at how their land can be used.

Colleen Dowdall stated that when the parcels develop, that review will occur by the City because they will have to annex in order to get sewer service. The more on-site issues such as drainage, roads, accesses, etc., will be reviewed by the City.

Chairman Carey asked if the City would have to live with the County's zoning if this is approved.

Colleen Dowdall stated that was correct and the City has been given an opportunity to review the proposal and the applicants have acknowledged it will be reviewed by the City upon development. They assert that the City multi-family standards have been applied to the design of the proposal.

Gilbert Larson stated that included in the zoning standards are provisions that all development will have to comply with both City and County standards. Several of the owners have already signed a petition to be annexed. From the beginning, the City has been involved, but the zoning cannot be done through the City because of certain circumstances.

Chairman Carey stated that it concerned him that two property owners have made a determination about the public's best interest. This is an urban proposal surrounded by the City, yet the County is being asked rather unnecessarily to zone the property. Why not deal directly with the City because it is basically a City project. The County is involved because of the refusal of a couple of owners to "live in the City."

Colleen Dowdall stated the City could annex this property but they won't do that unless it is petitioned for. The reasons behind this coming forward as a County project are many and varied and she would not go into details. However, Mr. Crawford, who brought the petition forward, is asking for zoning from the County. She did not feel the County could tell him they deferred to the City because it is within the County jurisdiction presently. Every effort has been made to put it in the City's jurisdiction by all parties involved, but it is just not possible at this time. The Commissioners have to decide the issue and their decision should be based on whether the proposal meets the zoning criteria, rather than if it is appropriate City or County development. More and more of these will be reviewed because of the extension of sewer.

Chairman Carey asked what should be done with regard to information recently submitted that hasn't had time to be adequately reviewed and the applicants right to a timely decision.

Colleen Dowdall stated that staff does not yet have a thorough understanding of the new proposal. She encouraged the Board to hear the proposal, but no findings have been prepared for them to consider. She would like to take another week to prepare some new findings.

Chairman Carey stated that staff would need at least that long.

Monte Sipe stated that in light of some of the recent information, he did not feel he could present new findings and felt that a week was not enough time. In the July letter requesting a postponement, it spells out a 30 day time frame to review any new information presented which changes the proposal, including agency comment. Gilbert has stated they do not intend to revise the proposal, but there is communication stating they are willing to revise it.

Colleen Dowdall stated at this point that is a decision for the Commissioners. The e-mail says those are things the developer is willing to live with in term of changes. If the Board took action on the zoning today, they could deny it, they could approve it as submitted or approve it, requiring changes so that it complies with whatever they wanted. They could approve the zoning, but the site plan has to reduce the 36-unit building to a 24-unit building, or whatever else they would like to see. At this point, the decision is for the Commissioners to make. She did not expect OPG's written recommendation to change, but the Board would have written findings to support changes they might make.

Commissioner Curtiss stated that they could ask OPG to consider findings for other requirements they may propose.

Colleen Dowdall stated that under those circumstances, considerably more time would be needed. If the Board has an idea of what they would like to require, they can approve the zoning based on those requirements and the findings could be written later.

Chairman Carey stated this was too big a proposal to act on without written recommendations from staff and counsel.

Colleen Dowdall stated that she did not agree that it needs to go back out for agency review. The changes proposed are planning changes that need to be discussed among planning staff. She did not know of any agency that would change their recommendation based on the new information. Steve King's recommendation won't change because this is still not in the City.



Commissioner Curtiss stated that Monte's report referred to 30 foot right-of-ways connecting the multi-family to the commercial, instead of the required 60 feet.

Monte Sipe stated that it doesn't really specify anywhere what the widths are or will be for the conditional access. There is a conceptual layout of the grid pattern with east/west connections. He assumed those were to be 30 feet, they look about half as wide as the north/south connections.

Greg Robertson stated that when he looked at the proposal relative to the road grid plan the Board adopted in 2001, he assumed those connections were alleys and not necessarily public road rights-of-way. They do meet the intent of the road grid and that would be his primary concern. If the cross connectors are proposed to be public roads, the right-of-way would need to be of adequate width to accommodate the infrastructure as well.

Colleen Dowdall stated she had asked Gilbert the same question. The 30 foot rights-of-way were what goes east/west through the apartment complex. The reason it was proposed at 30 feet was that it joined to something in Hellgate Meadows that is 27 feet. That was all that was proposed at 30 feet.

Gilbert Larson stated the 30 feet only refers to the east/west. The north/south will be 60 feet of right-of-way, which is wider than what is in Hellgate Meadows and meets County standards. The east/west through 1-5 would still be 30 feet and would function as an alley.

Greg Robertson stated that from the plans supplied by Gilbert, this looked more like internal circulation, not germane to the public road system.

Gilbert Larson stated that was correct.

Commissioner Curtiss stated new information has been presented that needs to be considered and she would like to make a decision at a later date. She is still concerned about the size of the buildings proposed. She understands that a building the size of the Carmike Cinema exists just over the fence line, but if buildings that large are allowed for another one-quarter to one-half mile down Mullan Road, it doesn't create a transition. The line has just been moved and she did not want that to happen. The buildings need to be of a smaller scale, perhaps larger than 2,500 or 3,500 square feet, but not 40,000 square feet, that is way to big.

Gilbert Larson stated they had the same sort of discussions with OPG Long Range Planning. In Hellgate Meadows, there was going to be neighborhood commercial with 2,000 square feet, not per acre but on small lots. This is still going to be fairly dense commercial. They looked at what was on the other side at 100,000 and talked about what would be appropriate for transition. The 30,000 to 50,000 square foot number was what Long Range Planning felt would be appropriate for commercial within Halling Farms for the transition.

Commissioner Curtiss asked if this was 30,000 square feet per lot or per building.

Gilbert Larson stated that was per building. During that discussion, the applicants heard 50,000 and Long Range Planning heard 30,000, so they compromised on 40,000. On one side of this proposal are 150,000 square foot buildings and on the other are conglomerates of 2,000 square foot buildings on 3,000 square foot lots. So there is fairly intense commercial on the other side as well. The transition was chosen at 40,000, which he believed to be reasonable and that figure came from planning. They are struggling with that, for 2-1/2 years they have been asking what is appropriate. They asked staff very pointedly if they didn't like the 40,000, then what would they like to see and they haven't received an answer. He could not give his clients an answer why 40,000 was not appropriate; would 35,000 square feet be better. He did not know the answer. The initial request was 50,000 which he felt was reasonable.

Colleen Dowdall stated that according to County Zoning regulations, the building size allowed in neighborhood commercial is smaller than what has been discussed. The maximum floor area for a retail food store is 3,500 square feet. Other uses are personal service, general merchandising, hardware store, clothing store and tailoring service, accessory buildings and uses and one-family dwellings in the same building as other allowed uses. Conditional uses include professional business and governmental office, repair services except automotive repair, eating establishments except drive-in establishments and commercial mini-warehouse. By going to the Board of Adjustment, uses could include public and quasi-public buildings and uses, automobile service stations, multi-family dwellings, other retail trades and services with no outdoor display or storage and public utility installation. When thinking of neighborhood commercial, it brings to mind the deli down the street or the little grocery store. The intent of neighborhood commercial is convenient shopping for a limited neighborhood market which involves retail enterprises dispensing commodities and providing personal or professional services to the individual. The uses should be both at the same intensity level and in the architectural scale of the neighborhood it serves.

Commissioner Curtiss stated that was not a Carmike Cinema-sized building.

Colleen Dowdall stated it would depend on what is described as a neighborhood. If a neighborhood is Halling Farms, then that may be correct. But if the neighborhood is considered as everything between Flynn and Reserve Street, then what is going to happen in Hellgate Meadows needs to be considered. In that neighborhood commercial zone, there could be an establishment with a liquor license. A business such as that would not serve just a limited community. It is hard to compare, when neither of these is built out, what the scale might be. The Hellgate Meadows zoning is difficult to read and determine what is going to happen and where.

Commissioner Curtiss stated her direction and advise would be buildings of something less than 10,000 square feet, if this is really going to be a transition. Houses past Flynn Lane are on one acre. Hellgate Meadows plan looks more like the residential past Flynn Lane the closer it gets to Flynn Lane. If these huge buildings keep moving closer to Flynn Lane, pretty soon they will be all along that stretch of Mullan Road. Transition should be that the buildings keep getting smaller. Mr. Crawford wants to move forward so the density is proposed on his property when the more dense housing might be better closer to dense housing in Hellgate Meadows.

Colleen Dowdall stated that to refine Commissioner Curtiss direction further, should the intensity becoming less dense occur within this zoning district or should this zoning district not have anything in the 40,000 square foot range. For instance, the tract closest to Wal-Mart, would she suggest greater intensity there, moving to less intensity within Halling Farms or leave it at lesser intensity for all of Halling Farms.

Commissioner Curtiss stated she would suggest beginning lesser intensity close to the Cinema, then moving to even less intensity toward Flynn Lane. That is her vision of transition.

Monte Sipe stated there were several meetings held after the second Planning Board hearing which provided information on several options. Many places are doing floor to area ratio standards where, as the size and scale of the structure gets larger, the property (lot) gets larger also, with increased setbacks and increased landscaping. The proposal currently is a 40,000 square foot footprint, it is not a 40,000 square footage maximum. The height restriction is 40 feet, which could potentially be a three story building with 40,000 square feet on each floor. There are no intentions at this time, but that is part of the concern, there are no defined parameters to understand what will occur. A 40,000 square foot footprint could potentially become a 120,000 square foot building. The original proposal from the applicant proposed 100,000 square foot footprint buildings and Long Range Planning's comment was for 30,000 to 50,000 square feet. It was unknown if that reference was for footprint or not. That is a key issue.

Colleen Dowdall asked what the EC zone was.

Monte Sipe stated it has no restriction on size, but after 100,000, it triggers additional requirements for landscaping, traffic mitigation, traffic study, etc. The large structures on Reserve Street are in EC zones, Highway Heavy Commercial. There are some buildings over 100,000 square feet but not over 150,000 square feet. The new Sportsman's Warehouse is just under 60,000 square feet, single story. The brick building in Hellgate Meadows is 16,000 to 17,000 square feet with a 6,000 square foot footprint with a basement and a second story. There are some larger lots to the northeast that could accommodate larger structures. The height restriction in Hellgate Meadows is 35 feet, with 40 feet for the village core. Staff has not provided the applicant with what to do nor is that staff's obligation. They have encouraged them, within the multi-family sections, to mix the types and styles of buildings, provide some duplex, six-plex and single family structures, break the types up and use different scales. The original proposal included all two-story buildings on the west and all three-story buildings on Tract 5. The redesign had three-story structures on Tract 6 and incorporated residential into the neighborhood commercial sub-district. They have made suggestions without actually helping to design the project. They have been encouraged to look at restrictions within the neighborhood commercial sub-district that could accommodate only a percentage of larger stores.

Chairman Carey stated he would prefer to not vote on this proposal today because he would have to vote for denial based on staff's findings. He felt there was a lot more work to be done in terms of defining the parameters. They should be tightened so it will better define what could be allowed in the district.

Commissioner Curtiss stated there is a difference between zoning and subdivision. Without some specific limitations, this could continue what exists on Reserve Street. They want to make sure that doesn't happen, that this does become a transition.

Commissioner Curtiss moved that the Board of County Commissioners delay a decision on the Halling Farms rezoning and takes under consideration the new information offered and give staff time to write new findings.

Gilbert Larson stated that in return he would take the Board's comments back to the owners to try to make them work. He has heard some good comments today about footprint versus total space and could possibly provide some schematics. He is still struggling with the neighborhood commercial. He would like it to be a transition between pure commercial to the east and encourage it to be more neighborhood related, but it is not intended to mirror what neighborhood commercial is defined as in the County's regulations. He could not come up with a term that better portrays what they would like to achieve.

Colleen Dowdall suggested "Village General."

Chairman Carey stated that Monte had some good ideas as well.

Commissioner Curtiss asked if a date needed to be determined.

Gilbert Larson stated that it would be helpful for them to work toward a specific date. It is zoning so there are no statutory time requirements.

Monte Sipe stated this is what created the problem before when this was scheduled for a date certain. Information came in at the last minute that didn't allow sufficient time for review. There could be some legal notice requirements but he would rather process new legal notice than specify a date so all issues could be discussed and reviewed prior to the hearing. That is what happened this time when a date specific was set, there was not enough time to review recently received information prior to the hearing.

Colleen Dowdall stated that if the public hearing is closed, it would not have to be continued to a date certain. It would be scheduled as a decision. If the Board wants to leave the public hearing open, then it should be continued to a date certain.

Gilbert Larson stated it could be kept to a relatively short period of time, perhaps a week or two. He agreed that the format for the special zoning district is solid and should remain in place – the conditional rights-of-way, the mitigations, etc. – providing a framework. If the action is to scale down the buildings in the commercial sub-district, then the Board could move to amend the proposal to further reduce the sizes. In return, hopefully this week, they will respond back to OPG and the Board to let them know what would be agreeable. He hasn't heard that major changes to the road grids or where things are allowed are needed. The changes are significant, but don't affect the plan substantially enough to go all the way back to Step 1. He felt they could be handled with the Commissioners in a week or two.



Monte Sipe stated that his concern was still that he would not have sufficient time to review the information. If the new information is provided to him in a week or two, he will still need time to review it and make findings. Receiving information from the applicant in a week or two, thereby giving him only a few days to review it, is not adequate. He wanted the Commissioners to understand that he will need to schedule the work along with all the other projects he is currently working on.

Chairman Carey stated that he would prefer to close the hearing and wait for the applicant to submit new information. Once it is received, staff will review it thoroughly as quickly as possible.

Commissioner Curtiss stated that she would agree to close the hearing. She would hope the applicant could provide the information as quickly as possible so a decision could be made by October 8, 2003.

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

Chairman Carey seconded the motion to postpone the decision. The motion carried on a vote of 2-0.

**Hearing: Hidden Trail PUD Major Subdivision (69 lots) – base of Mount Jumbo in East Missoula – Postponed from August 20, 2003**

Chairman Carey opened the public hearing.

Monte Sipe, Office of Planning and Grants, presented the staff report.

This is a request from Yawle Seven LLC, represented by PCI, Inc., to subdivide a 13 acre parcel into 67 lots as a Planned Unit Development Subdivision – 54 lots for detached single family residential, 10 lots for townhouses and 3 lots for 4-plex multi-family dwellings. The property is located at the base of Mount Jumbo, off the west end of Staple Street, Utah Avenue and Judi Drive in East Missoula.

Planning Board heard this request on August 5, 2003. At the outcome of this hearing, the Planning Board recommended approval of the request by a vote of 3-0 with 15 conditions. One of the Planning Board motions was that the developer, OPG and Public Works meet to develop an agreed upon solution to the slope issue/variance request prior to governing body action.

The property is unzoned and the 1998 Missoula Urban Area Comprehensive Plan Update designates the property proposed for development as “Suburban Residential” with a recommended maximum density of 6 dwelling units per acre. The gross residential density, after elimination of two lots for an additional common area/storm drainage area, for 76 units on 13 acres is 5.85 dwelling units per acre.

Subdivision Regulations Article 3-12(2) states that to obtain designation of a subdivision as a PUD, the subdivider shall submit a layout plan showing the proposed location and use of lots and structures and, if appropriate, the location and number of parking spaces. Staff is recommending a condition that the proposed building envelopes for dwellings and garages/carports be delineated on the face of the final plat for each phase and that all setbacks are incorporated into the covenants. Staff is recommending that the proposed parking requirement of 2 off-street parking spaces for the townhouse and single family lots be incorporated into the covenants.

Proposed access for the subdivision is from Highway 200, primarily on Staple Street, an off-site road on the north end of the subdivision, looping through to connect to Judi Drive on the south end of the development, also currently an off-site road which connects to Highway 200. The project will also connect to Utah Avenue near the middle of the development. Glen Cameron, Missoula District Traffic Engineer for MDT, did not have any comments on the proposal at the time of agency review.

Subdivision Regulations Article 3-12(5) allows the street and road requirements to be modified or waived by the governing body upon request of the subdivider when the plan for a PUD provides for efficient traffic circulation and when existing standards are not practical or reasonable in the overall PUD subdivision design. The proposed variations for the on-site roads and alleys include: 5 foot non-boulevard sidewalks on each side of Conner Court and Utah Avenue and a 41 foot right-of-way radius for the cul-de-sac on Conner Court and a 15 foot right-of-way for the extension of the alley off Conner Court. During revisions based on staff and Planning Board comment, the boulevards were also eliminated from the on-site portion of Staple Street. The proposed variations for the off-site roads include: a 24 foot paved surface with no curb and gutter and a 5 foot concrete boulevard sidewalk on the southwest side of Staple Street, no improvements to Utah Street, and a 24 foot paved surface with no curb and gutter or walkways for Judi Drive.

The proposed subdivision is immediately adjacent to Mountain Water Company water mains and City of Missoula sewer. The subdivision will connect to these public utilities.

Subdivision Regulations Section 3-12(7) requires each PUD to provide at least one-ninth of the platted area, exclusive of all other dedications, for common open space, either held in common ownership by the owners in the development area, be dedicated to public use, or a combination of public and private ownership. The applicant has proposed 3.9 acres of public parkland on Mount Jumbo (which has now increased to 4.1 acres) and 0.30 acres of common area to satisfy the park and open space requirement for this subdivision.

In response to comments from agencies, recommendations from OPG and comments concerning storm drainage issues from Public Works, the applicant has eliminated two lots (proposed Lots 27 and 28) and proposed 0.20 acres of additional common area designated as “Common Area 5.”

The proposed covenants require the Homeowners Association to be responsible for maintenance of the common areas including watering and landscaping. A mechanism for assessing landowners for maintenance is included in the covenants. Staff is recommending that an RSID be created for maintenance of all park and boulevard areas to be dedicated to the

public. Additionally, staff recommends a condition that improvements to the parks, boulevards and common areas be installed concurrently with the approved subdivision phases.

The subdivision will be served by the East Missoula Rural Voluntary Fire District, with a fire station located approximately 1 mile from the property. The applicant has proposed connection to Mountain Water's system with water mains and fire hydrants throughout the subdivision. Staff is recommending that the final design for hydrant location be reviewed and approved by the East Missoula Rural Fire District prior to final plat approval of each phase.

Staff is recommending that the phasing plan, including proposed improvements, specifically temporary turn-outs, for each phase be submitted for review and approval by Public Works and the East Missoula Rural Fire District prior to final plat approval of Phase I.

The property is located on relatively flat ground, with the western side of the property having an abrupt hillside grade of 25% or more. The toe of this hillside is the proposed location of Lots 7-21 and TH1-TH10. The property proposed for Lots 7-21 and TH1-TH10 is currently located outside of the Urban Growth Area. Subdivision Regulations Article 3-15(4) requires that lots have a 2,000 square foot contiguous buildable area with a slope of less than 25%.

A variance was originally needed for Lots 7-21 and TH1-TH10 because these lots did not have a 2,000 square foot contiguous buildable area prior to development. After revisions that included eliminating the boulevards from Staple Street, Lots 1-5 were shifted south 14 feet and Lots 6-21 and TH1-TH10 were shifted east 14 feet. This allowed the proposed structures to be shifted east and thus brought some lots into compliance with the hillside regulations. After revisions, only Lots 8-10, 18, 19, 21 and TH1-TH10 require the variance. The applicant submitted a new slope stability evaluation report on August 27, 2003. Based on this new report, Public Works now supports the variance request for the lots that still do not meet the hillside regulations, with some conditions. Staff is now recommending approval of the hillside variance request with concurrence of Public Works, based on the revised findings of fact and recommended conditions contained in the memo dated September 9, 2003.

One public comment letter and several phone calls and office visits have been received on this proposal. The concerns included off-site street improvements, views and fire protection. Most of those concerns were addressed by staff.

After the Planning Board hearing, a Request for Commission Action was prepared. Planning Board made several modifications. The issue of a meeting to work out slope issue has already been mentioned. They also recommended the conversion of Lots 27 and 28 to common area. To be clear, what is being reviewed today is a revised proposal. Planning Board recommended deleting Condition 10 that all slopes of 25% or greater be designated as "No Build" zones. Based on the recent slope analysis, staff would agree to delete that condition as shown in the September 9, 2003 memo. Planning Board recommended adding Conditions 15 and 16. Condition 15 states: "As long as the portion of Utah Avenue outside of the subdivision boundary is unpaved that a barricade be constructed between the paved and unpaved portion of Utah Avenue sufficient to prevent the passage of motor vehicles through such barricade." The applicants are in agreement with that condition.

Condition 16 was added based on the recommendation from Planning Works in relation to the slope stability study. The language was modified slightly by Colleen and the Board should refer to those changes when approving Condition 16.

Staff is recommending approval of the Hidden Trail PUD Preliminary Plat with 16 conditions as presented in the memo dated September 9, 2003. There are several issues in regard to the redesign that included modification to the on-site portion of Staple Street that may require some additional discussions.

Dick Ainsworth, PCI, developer's representative, stated that Monte covered the proposal quite well. The Mountain Water storage tank on the hill above this property has been there for a number of years. Mountain Water has wanted to expand it for some time but has been unable to because the previous owner of the property would not allow access to it. When the applicants purchased the property, they met with Mountain Water and agreed to provide access and made a substantial contribution to increase the water flow in East Missoula. This is a plus to the community that hasn't been discussed. There have been some mutual agreements reached on this proposal which both Colleen and Greg are okay with. This is the revised plan submitted in late August. The boulevards have been removed from all of Staple Street and the right-of-way narrowed. It had originally been 58 feet but is now shown as 44 feet. During discussions this morning, it was determined that the boulevards would be put back in to about Lot 5 and increase that right-of-way back to 58 feet, with some transition. There would still not be boulevards on the remainder of Staple Street from Lot 5 through Townhouse Lot 10. The right-of-way easement would be increased to 54 feet but the boulevards would not be added back in. All of the other conditions proposed are acceptable. Greg's recommended conditions regarding the slope stability analysis are acceptable.

Monte Sipe stated that a modification to Condition 5 based on discussions would be: "The on-site portion of Staple Street, where it commences at the northeast corner of the property, shall contain a 58 foot right-of-way with a 32 foot paved surface and boulevard sidewalks until a point on the west side of proposed Lots 5 and 48, where it would transition to a 54 foot right-of-way easement containing a 32 foot paved road width with 5 foot curbside sidewalks to the southern boundary of the property. Plans for these improvements shall be reviewed and approved by OPG and Public Works prior to the installation or final plat approval for Phase I, whichever occurs first."

Colleen Dowdall asked if sidewalks were anticipated across the common area.

Dick Ainsworth stated that was correct.

Monte Sipe stated the sidewalks would continue past the common area. The only other amendment would be the recommended changes from Colleen on Condition 16.

Commissioner Curtiss proposed Condition 16 to read: "Alterations to the slopes shall conform to the recommendations of the geotechnical report dated August 27, 2003. A qualified geotechnical engineer shall be on-site during the construction of the slope work. Submittal of the as built record drawings shall be accompanied by the certification of the geotechnical

engineer that all work was completed under the engineer's supervision in compliance with the geotechnical report. Any changes in soil conditions noted by the engineer shall be outlined in the certification with the engineered remedy employed to address the change."

Dick Ainsworth stated that they were intending the sidewalks to go wherever there was a common area.

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

Commissioner Curtiss moved that Condition 16 be amended as she just described and that Condition 5 be amended as described by Monte Sipe. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Article 3-15(4) of the Missoula County Subdivision Regulations requiring Lots 8-10, 18, 19, 21 and TH1-TH10 to have a 2,000 square foot contiguous buildable area with slope of less than 25%, based on the findings of fact contained in the staff report and the revised findings of fact contained in the memorandum from Monte Sipe dated September 9, 2003. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the Hidden Trail Subdivision, based on the revised findings of fact and subject to the revised recommended conditions contained in the memorandum from Monte Sipe dated September 9, 2003 and as amended at this hearing. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

#### **Hidden Trail Planned Unit Development Subdivision Conditions of Approval:**

1. The proposed building envelopes for all dwellings and garages/carports shall be delineated on the face of the final plat for each phase. Additionally, the specified setbacks for the three defined lot types shall be incorporated into the covenants. This condition is subject to review and approval by OPG prior to final plat approval of each phase. *Subdivision Regulations Article 3-12(2) and OPG recommendation.*
2. The covenants shall be amended to include the requirement for two off-street parking spaces for the townhouse and single family lots, subject to review and approval by OPG, prior to final plat approval of Phase I. *Subdivision Regulations Article 3-12(2) and OPG recommendation.*
3. The covenants shall be amended to include a provision that the homeowners are responsible for maintenance and repair of the stormwater drainage system, subject to review and approval by OPG, prior to final plat approval of Phase I. *Subdivision Regulations Article 3-4, Public Works and OPG recommendation.*
4. The following language shall be noted on the face of the final plat for each phase:

"Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any RSID/SID, based on benefit, for upgrading the streets within the subdivision, including, but not limited to, paving, curbs and gutters, non-motorized facilities, street widening and drainage facilities, subject to review and approval by OPG. *Subdivision Regulations Article 3-2(3)(E).*"
5. The on-site portion of Staple Street, where it commences at the northeast corner of the property, shall contain a 58 foot right-of-way with a 32 foot paved surface and boulevard sidewalks until a point on the west side of proposed Lots 5 and 48, where it would transition to a 54 foot right-of-way easement containing a 32 foot paved road width with 5 foot curbside sidewalks to the southern boundary of the property. Plans for these improvements shall be reviewed and approved by OPG and Public Works prior to installation or final plat approval for Phase I, whichever occurs first. *Subdivision Regulations Article 3-2 and OPG recommendation.*
6. Improvements to the parks, boulevards and common areas shall be installed concurrently with the approved subdivision phase where the improvements are located. Improvements shall consist of, at a minimum, boulevard trees as required by the regulations, a shelter and benches within the dedicated parkland, seeding of the common areas and installation of picnic tables and benches in Common Areas 3 and 5. Plans for improvements shall be reviewed and approved by the County Park Board and OPG prior to final plat approval of Phase I. *Subdivision Regulations 3-12(2)(D), 3-12(3)(D) and 3-12(3)(E).*
7. An RSID/SID shall be created for maintenance of all park areas and street boulevard plantings. A Development Agreement shall be filed that states the developer shall provide all maintenance of the park, boulevards and common areas until enough development to support the Homeowners Association and the RSID/SID has taken place. The Development Agreement shall be filed prior to final approval of Phase I, subject to County Attorney's Office approval. *Subdivision Regulations Article 3-8.*
8. The East Missoula Fire District shall review and approve the design, location and installation of the water supply for fire protection purposes and fire hydrant locations prior to final plat approval of each phase. *Subdivision Regulations Article 3-1(6) and 4-1(12).*
9. A detailed phasing plan, including proposed improvements, shall be approved by Missoula County Public Works and the East Missoula Fire District, subject to OPG review, prior to final plat approval of Phase I. *Subdivision Regulations Article 3-2 and 3-7.*
10. The covenants shall be amended to include Fish, Wildlife and Parks recommendations addressing conflicts with wildlife, subject to approval by OPG, prior to final plat approval of Phase I. *Subdivision Regulations Article 4-1(12) and FWP recommendation.*
11. A Revegetation Plan for disturbed sites shall be reviewed and approved by the Missoula County Weed Board prior to final plat approval of Phase I. The covenants shall be amended to require lot owners to maintain their lots in

compliance with the Montana County Weed Control Act and the Missoula County Noxious Weed Management Plan. The covenants shall further require lot owners to revegetate any ground disturbance created by construction or maintenance with beneficial species at the first appropriate opportunity after construction or maintenance is completed. These covenant amendments shall be approved by the Missoula County Weed District prior to final plat approval of Phase I. *Subdivision Regulations Article 3-1(1)(B) and Weed Board recommendation.*

12. The easement language for access to the Mountain Water Company storage tank shall be modified subject to review and approval by County Parks, County Surveyor's and County Attorney's Office, prior to final plat approval of Phase I. *Subdivision Regulations Article 3-6 and County Surveyor's Office recommendation.*
13. The covenants shall include a provision advising property owners of the Health Department recommendation that all new construction incorporate passive radon mitigation systems. The language of the provision shall be subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-1(2) and City-County Health Department recommendation.*
14. The covenants shall be amended to include the following provision: "No covenants or sections thereof relating to building setbacks, parking, living with wildlife, weeds and stormwater maintenance may be changed without prior written consent of the governing body." *Subdivision Regulations Article 4-1(12), OPG, Public Works and FWP recommendation.*
15. As long as the portion of Utah Avenue outside of the subdivision boundary is unpaved, a barricade shall be constructed between the paved and unpaved portion of Utah Avenue sufficient to prevent the passage of motor vehicles through such barricade. *Planning Board recommendation.*
16. Alterations to the slopes shall conform to the recommendations of the geotechnical report dated August 27, 2003. A qualified geotechnical engineer shall be on-site during the construction of the slope work. Submittal of the as built record drawings shall be accompanied by the certification of the geotechnical engineer that all work was completed under the engineer's supervision in compliance with the geotechnical report. Any changes in soil conditions noted by the engineer shall be outlined in the certification with the engineered remedy employed to address the change. *Subdivision Regulations Article 3-1(12), 3-15(4) and Public Works recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 3:33 p.m.

#### THURSDAY, SEPTEMBER 11, 2003

The Board of County Commissioners met in regular session; a quorum of members was present. In the forenoon, Commissioner Curtiss participated in the ribbon cutting ceremonies for 1<sup>st</sup> Interstate Bank on Brooks Street. In the evening, Commissioner Curtiss attended a community meeting for the Miller Creek Road EIS held at the Baptist Church on Blue Mountain Road.

#### Site Inspection

In the afternoon, Commissioner Curtiss accompanied Chuck Wright, Assistant Public Works Director, on a site inspection for the request to vacate a portion of Old Blue Mountain Road.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated September 11, 2003, with a grand total of \$8,992.55. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

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

Resolution No. 2003-091 – The Commissioners signed Resolution No. 2003-091, dated September 11, 2003, a Budget Amendment in the amount of \$16,400 for Motor Pool/Capital Improvement, correcting the CIP budget to reflect the actual amount of the approved motor pool purchase (\$70,400 per ER #86). For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Grant Award – Chairman Carey signed award documentation for the continuation of the federal Rural Domestic Violence grant received from the Justice Department, Office of Violence Against Women (OVAW). Missoula County received \$399,978 for a two-year period; since 1996, the total continuation award is \$1,276,303. The documents were returned to Leslie McClintock in the Office of Planning and Grants for further handling.

Flood Project Documents – Chairman Carey signed the following documents relating to a FEMA Pre-Disaster Mitigation Grant proposal for the Grant Creek Flood Control Project:

- 1) Agent Authorization letter to Montana Disaster and Emergency Services (DES), dated September 10, 2003, authorizing Public Works Director Greg Robertson to act on behalf of Missoula County on matters relating to the grant proposal;
- 2) Interlocal Agreement with the State of Montana, agreeing to comply with all federal requirements if the grant is received; and
- 3) Funding Commitment Letter to DES, dated September 10, 2003, stating that Missoula County is fully aware of the match requirements of the grant, and will be responsible for getting the necessary match should the grant be awarded.

All other terms and conditions are set forth therein. The documents were returned to Greg Robertson for further handling.

Other items included:

- 1) An update was given by Jane Ellis, Director of Disaster & Emergency Services, regarding current wild fire restrictions.

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

**FRIDAY, SEPTEMBER 12, 2003**

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

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated September 10, 2003, with a grand total of \$7,120.85. The Claims List was returned to the Accounting Department.

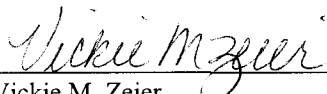
Claims Lists – Commissioners Carey and Curtiss signed two (2) Claims Lists, dated September 11, 2003, with the following grand totals:

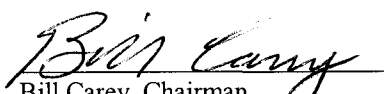
- 1) \$5,173.14; and
- 2) \$66,088.15.

The Claims Lists were returned to the Accounting Department.

Emergency Resolution No. 2003-092 – The Commissioners signed Resolution No. 2003-092, dated September 12, 2003, an Emergency Proclamation declaring a return to Level I (from Level II) restrictions on all private lands in Missoula County as of 00:01 September 13, 2003.

Resolution No. 2003-093 – The Commissioners signed Resolution No. 2003-093, dated September 12, 2003, setting fees for the Swan Valley Fire Service Area, assessing \$75 per residence or business for Fiscal Year 2004.

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

**MONDAY, SEPTEMBER 15, 2003**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was on vacation the week of September 15<sup>th</sup> through the 19<sup>th</sup>.

Claims Lists – Commissioners Carey and Curtiss signed three (3) Claims Lists, dated September 11, 2003, with the following grand totals:

- 1) \$9,710.30;
- 2) \$1,037.28; and
- 3) \$981.02.

The Claims Lists were returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtiss signed two (2) Claims Lists, dated September 12, 2003, with the following grand totals:

- 1) \$68,445.92; and
- 2) \$238,826.15.

The Claims Lists were returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtiss signed two (2) Claims Lists, dated September 15, 2003, with the following grand totals:

- 1) \$5,227.95; and
- 2) \$64,990.36.

The Claims Lists were returned to the Accounting Department.

Plat Amendment – At their September 15, 2003 Planning Status meeting with the Office of Planning and Grants, the Commissioners approved and signed a letter, dated September 15, 2003 to Gilbert Larson, Professional Consultants Inc., approving his request for a minor plat amendment (regarding a proposed lot on the cul-de-sac of Street F to be moved further to the west to land that is not as steep) of the Miller Creek View Addition Subdivision preliminary plat.

Revised Phasing Plan – At their September 15, 2003 Planning Status meeting with the Office of Planning and Grants, the Commissioners approved and signed a letter, dated September 15, 2003 to John Kellogg, Professional Consultants Inc., approving his request for a revised phasing plan replacing Phases 2 and 3 of the Invermere Subdivision with Phases 2A (to be recorded by August 4, 2005) and 3A (to be recorded by August 4, 2007) (per Attachment "A" thereto).

**TUESDAY, SEPTEMBER 16, 2003**

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

Replacement Warrant – Chairman Carey examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Daniel E. Parrish for Missoula County Public Schools (MCPS) as applicant for MCPS

Warrant #92063 on the Missoula County HS Fund 217 (Adult Ed), issued July 17, 2003 in the amount of \$50.00 (for tuition refund). No bond of indemnity is required.

#### ADMINISTRATIVE MEETING

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

Agreements – The Commissioners signed six (6) Sanitary Sewer Grant Program Agreements for Assistance to Owner-Occupied Households Secured by Real Property, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. The Agreements provide funds for sewer improvements and connection to the City of Missoula municipal sewer system, as follows:

- 1) Agreement for partial assistance, dated September 4, 2003, with Lela Beagley, 545 Speedway Avenue;
- 2) Agreement for partial assistance, dated September 10, 2003, with Earl T. and Sharon M. Smith, 4 Canyon View Drive;
- 3) Agreement for partial assistance, dated September 2, 2003, with Carol J. Galland, 335 Montana Avenue;
- 4) Agreement for full assistance, dated September 3, 2003, with Wendy Erhardt, 546 Judi Drive;
- 5) Agreement for full assistance, dated September 8, 2003, with Eleanor M. Hamer (Trustee), 3410 Hwy 200 East; and
- 6) Agreement for partial assistance, dated August 28, 2003, with Murvin B. and Joyce M. Rickel, 28 Canyon View Drive.

All sewer development fees and on-site connection costs and fees are as set forth therein.

Resolution No. 2003-095 – The Commissioners signed Resolution No. 2003-095, dated September 16, 2003, a Budget Amendment for the Missoula County Attorney's Office, in the amount of \$4,300, indicating an addition to the Community Support Grant. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Lease Agreement – The Commissioners signed a Lease Agreement (a one-year extension), dated September 16, 2003, between Missoula County and the Backwoods BMX Club at Big Sky Park, with the requirement that Mr. (Nate) Bundy successfully complete a race on the track by September 22, 2003. The lease will terminate on September 1, 2004. The document was returned to Lisa Moisey, Parks Coordinator, for further signatures and handling.

Agreement – The Commissioners signed an Agreement for Maintenance of Fort Missoula Park Complex Grounds, dated September 16, 2003, between Missoula County and the City of Missoula Parks and Recreation Department. The total amount shall not exceed \$49,750.00. The term will be July 1, 2003 through June 30, 2004. All other terms and conditions are set forth therein. The document was returned to Donna Gaukler at City Parks & Recreation for further signatures and handling.

Resolution No. 2003-094 – The Commissioners signed Resolution No. 2003-094, dated September 16, 2003, setting the assessments for the Seeley Lake Sewer District, by levying a tax in the form of a \$72 per parcel assessment on each parcel in the District. This fee is an administrative fee, and not a use fee. The Commissioners recognize that if a sewer system is established, the user fee should be based on use and not assessed by the number of parcels owned. In addition, the district boundaries should probably be enlarged to add more parcels.

Resolution and Closing Documents – Chairman Carey signed Resolution No. 2003-096, dated September 16, 2003, authorizing participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (INTERCAP Revolving Program), and all loan documents related thereto. The loan, in the amount of \$134,171.00, will be used for the purchase of vehicles and copiers. The Closing Date for the Loan is September 26, 2003. The term over which the loan advance is to be amortized is September 26, 2003 through August 15, 2005 (three years).

Agreement – The Commissioners signed an Agreement, dated September 9, between Missoula County and Burton Construction, Inc., for the window and stair restoration of the Missoula County Courthouse. The estimated total amount for the project is \$97,971.00. The project is to be completed forty-five calendar days from the date set forth in the "Notice to Proceed". All other terms and conditions are set forth therein. The document was returned to Doreen Culver, Bidding Officer, for further handling.

Other items included:

- 1) The Commissioners voted to appoint Chairman Carey and CAO Ann Mary Dussault as the BCC designees to the Brownfields Cleanup RLF Committee.
- 2) A discussion was held regarding the Public Defender Lawsuit status. Six other Montana counties will probably not be part of the lawsuit because they no longer deal with Public Defender issues; the counties no longer take responsibility. As of July 3<sup>rd</sup>, the State is 100% responsible for indigent legal costs.

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

**WEDNESDAY, SEPTEMBER 17, 2003**

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

**CHIEF ADMINISTRATIVE OFFICER MEETING**

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

Request for Action – Per recommendation from Jane Ellis, Director of Emergency Services, the Commissioners approved awarding the following Grants for Missoula County Fuels Mitigation projects: 1) Missoula Rural - \$15,000 (O'Brien Creek); 2) Frenchtown - \$20,000 (vehicle with dump bed to pull chipper); and 3) Greenough Potomac - \$5,000 (Potomac area). All other terms and conditions are set forth therein. The document was returned to Jane Ellis in DES for further handling.

Other items included:

- 1) A discussion was held regarding RSID budgets. CFO Dale Bickell will work with Mike Sehestedt to draft a resolution to adopt RSID budgets.

**PUBLIC MEETING – September 17, 2003**

The Public Meeting was called to order at 1:30 p.m. by Chairman Bill Carey. Also present were Commissioner Jean Curtiss, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall, County Bidding Officer Doreen Culver and County Public Works Director Greg Robertson. Commissioner Barbara Evans was on vacation.

**Pledge of Allegiance****Public Comment**

None

**Routine Administrative Actions**

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$476,593.67. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

**Bid Award: RSID 8472 (Spring Hill Road) – Postponed to a Date to be Determined**

Chairman Carey announced that the Bid Award for RSID 8472 (Spring Hill Road) had been postponed to a date to be determined.

**Decision: Petition to Vacate a Portion of Old Blue Mountain Road**

This is a petition to abandon a portion of "Old road in Road Book 1, Page 46, Sheet 116, bounded on the south by the southerly line of Tract 12 A-2 as shown in Wornath Orchard Tracts Subdivision, Tracts 12 A-1 and 12 A-2, records of the County of Missoula, State of Montana, and bounded on the north by the southwesterly right-of-way line of Blue Mountain Road as shown in said subdivision, located in Section 2, Township 12 North, Range 20 West, Missoula County, Montana."

The reasons for the request are as follows: 1. The right-of-way is no longer needed.

The following landowners have been notified: USA McDonald, James M. McDonald and Blue Mountain Business Center LLC.

Chuck Wright, Assistant Public Works Director, stated the abandonment of this portion of Old Blue Mountain Road is a housekeeping matter. He and Commissioner Curtiss performed a site inspection on September 11, 2003 and recommend that the portion of Old Blue Mountain Road listed in the petition be abandoned.

Commissioner Curtiss stated that the right-of-way being abandoned is not on a portion of the existing Blue Mountain Road; it is a right-of-way that only shows on a map. She agreed with Mr. Wright's recommendation.

Commissioner Curtiss moved that the Board of County Commissioners approve the petition to abandon a portion of Old road in Road Book 1, Page 46, Sheet 116, bounded on the south by the southerly line of Tract 12 A-2 as shown in Wornath Orchard Tracts Subdivision, Tracts 12 A-1 and 12 A-2, records of the County of Missoula, State of Montana, and bounded on the north by the southwesterly right-of-way line of Blue Mountain Road as shown in said subdivision, located in Section 2, Township 12 North, Range 20 West, Missoula County, Montana. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

**Sale of Tax Deed Property**

Mike Sehestedt stated both of these parcels are property the County took for tax deed sometime in the past. There has been interest expressed in the parcels and they have been re-appraised by the Department of Revenue, as required by statute as they are worth more than \$2,500. They are being offered for sale to the public at auction. The terms of the sale will be 10% down today and a personal check will be accepted. The successful bidder then has 7 days to obtain a financing commitment and up to 60 days from today in which to actually schedule a closing. The minimum bid as a

matter of law is the appraised amount set by the Department of Revenue. If the property does not sell at auction at this time, the County has the option of negotiating a private sale for not less than 70% of the appraised value. The County will convey this property by quit claim deed without warranty.

Mike Sehestedt stated that the first parcel listed is Lot 8 of Hansen's Bitterroot Tracts which has a fair market value of \$57,000. The minimum bid is \$57,000. He asked if there were any bidders.

Richard A. Williams bid \$57,000.

Cindy Williamson bid \$60,000.

Richard A. Williams bid \$62,000.

Susan Cantrell bid \$63,000.

Richard A. Williams bid \$64,000.

Susan Cantrell bid \$65,000.

Richard A. Williams bid \$66,000.

Susan Cantrell bid \$66,500.

Richard A. Williams bid \$67,000.

Susan Cantrell bid \$69,000.

Richard A. Williams bid \$70,000.

Susan Cantrell bid \$71,000.

Richard A. Williams bid \$72,000.

Mike Sehestedt stated he had a bid of \$72,000, going once, going twice. Seeing no further bids, he declared the property sold to Richard A. Williams for \$72,000.

Mike Sehestedt stated that the next property for sale at auction is Lot 16 – Spring Valley Acres with a fair market value as determined by the Department of Revenue of \$46,057. The minimum bid is \$46,057. He asked if there were any bidders. He asked again if there were any bidders for Lot 16 – Spring Valley Acres. He made the third and final call for bids on Lot 16 – Spring Valley Acres. Seeing no bids for Lot 16 – Spring Valley Acres, he declared the auction closed.

Mike Sehestedt stated he would recommend the County examine the property, ask the Department of Revenue to review their value figures and make a determination as to whether or not it should be offered at auction again or attempt to negotiate a private sale using the appraised price.

**Hearing: Hawthorn Springs (97 lots on 518 acres) – Between the Wye and Frenchtown, north of I-90 – Postponed to October 1, 2003**

Chairman Carey announced that the hearing on Hawthorn Springs (97 lots on 518 acres), between the Wye and Frenchtown, north of I-90 had been postponed to October 1, 2003.

**Consideration: Carlson Acres (2 lots on 2.47 acres) – Carlson/Jones Road**

Monte Sipe, Office of Planning and Grants, presented the staff report.

This is a request from Clinton and Sally Carlson, represented by Eli and Associates, to create Carlson Acres, a two lot subdivision on a 2.47 acre parcel. The subject property is located in southern Missoula County, near the Ravalli County line. It consists of a 2.47 acre parcel that the applicant is proposing to subdivide into two lots, containing a 1.11 acre parcel and a 1.36 acre parcel. The parent parcel, Tract B-1 of COS 1593, was created through an occasional sale in 1978. Currently, two homes are located on the parcel and have been in place since approximately 1984. The proposed subdivision is accessed via a driveway with an approximate 12 foot gravel width within a proposed 30 foot access and public utility easement that accesses from Jones Road. Jones Road is a County maintained public roadway within a 60 foot right-of-way which currently has a gravel surface width of approximately 22 feet. The applicant has requested two variances. The first is to the Jones Road surface width. Subdivision Regulations would require a 24 foot surface width. Staff and Public Works are recommending approval of the variance request. The second variance is to the requirement for a system of pedestrian and/or bicycle circulation within the subdivision. Staff and Public Works are recommending approval of the variance request. There are no existing walkways in the vicinity. It is a fairly rural area. Staff is recommending approval of the subdivision, subject to two recommended conditions. The conditions pertain to a water supply for fire protection purposes and provisions to be included in a Development Agreement addressing weeds, revegetation, passive radon mitigation systems, and a maintenance and use agreement for the shared well and drainfield.

Chairman Carey asked for public comments.

Ron Ewart, Eli and Associates, developer's representative, stated that Sally and Clinton Carlson were present today. They are in agreement with the conditions as recommended. There are two existing homes on the property and this would divide the property into two lots.

There were no further public comments.



Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Section 3-2(14) of the Missoula County Subdivision Regulations that requires Jones Road to have a surface width of 24 foot, based on the findings of fact contained in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Section 3-2(8)(A)(iii) of the Missoula County Subdivision Regulations that requires a system of pedestrian and/or bicycle circulation within the subdivision, based on the findings of fact contained in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the Carlson Acres Summary Subdivision, based on the findings of fact and subject to the recommended conditions contained in the staff report. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

**Carlson Acres Summary Subdivision Conditions of Approval:**

**Fire**

1. Final plans for water supply for fire protection purposes shall be reviewed and approved by the Florence Rural Fire District, prior to final plat approval. Subdivision Regulations Article 3-7(1) and Florence Rural Fire District recommendation.

**Development Agreement**

2. A Development Agreement 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. The landowner shall maintain the property in compliance with the Montana County Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan.
  - b. The landowner shall revegetate any ground disturbance caused by construction or maintenance. The vegetation should be with beneficial species appropriate for the site and should occur at the earliest appropriate opportunity after construction or maintenance is completed. Subdivision Regulations Article 3-1(1) and Weed District recommendation.
  - c. A provision advising property owners of the Health Department recommendation that all new construction incorporates passive radon mitigation systems. The language of the provision shall be subject to review and approval by OPG prior to final plat approval. City-County Health Department recommendation.
  - d. A maintenance and use agreement for the shared well and drainfield. Subdivision Regulations Article 3-1(6), 3-7 and OPG recommendation.

There being no further business to come before the Board, the Commissioners were in recess at 1:45 p.m.

**THURSDAY, SEPTEMBER 18, 2003**

The Board of County Commissioners met in regular session; a quorum of members was present. In the afternoon, Commissioner Carey attended a Travelers Rest Board Meeting in Lolo.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated September 12, 2003, with a grand total of \$5,807.15. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtiss signed two (2) Claims Lists, dated September 16, 2003, with the following grand totals:

- 1) \$24,650.99; and
- 2) \$2,799.19.

The Claims Lists were returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtiss signed two (2) Claims Lists, dated September 17, 2003, with the following grand totals:

- 1) \$9,863.69; and
- 2) \$18,107.11.

The Claims Lists were returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtiss signed three (3) Claims Lists, dated September 18, 2003, with the following grand totals:

- 1) \$202,185.93;
- 2) \$3,388.41 and
- 3) \$105,054.28.

The Claims Lists were returned to the Accounting Department.

Plat – The Commissioners signed the Plat for Maxwell's Shilling, a subdivision located in the SW¼ of Section 26, T 13 N, R 20 W, PMM, Missoula County, a total area of 4.78 acres, with the owners of record being Lawrence J. and Eva M. Maxwell.

ADMINISTRATIVE MEETING

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

Addendum – The Commissioners signed an Addendum, dated September 18, 2003, for Additional Provisions to an Agreement to Sell and Purchase (dated April 18, 2003) between Missoula County (“Seller”) and Woodahl Land and Livestock Company, LLC (Harley-Davidson Motor Company) (“Purchaser”), concerning property in the Missoula Development Park (“MDP”). An extension has been granted to Harley-Davidson to certain provisions (set forth therein) in the Buy/Sell Addendum, until October 30, 2003 (Release Date), as additional time is needed to obtain variances from the Board of Adjustments, prior to closing. The document was returned to Barb Martens in the Projects Office for further signatures and handling.

Emergency Resolution No. 2003-098 – The Commissioners signed Resolution No. 2003-098, dated September 18, 2003, an Emergency Proclamation declaring that all emergency fire restrictions on private lands in Missoula County are lifted effective at 00:01 September 19, 2003, and that Missoula County is no longer in a state of emergency. The normal fire restrictions related to air quality still apply, and burning permits are still required per normal regulations.

Resolution No. 2003-097 – The Commissioners signed Resolution No. 2003-097, dated September 18, 2003, a Budget Amendment for the District Court, in order to correct the JAIBG Grant revenues and expenses, as set forth therein. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Letter – The Commissioners signed a letter sent via facsimile, dated September 18, 2003, to American Express, Phoenix, Arizona, regarding the Western Montana Fair American Express Corporate Card Program and Missoula County’s agreement to guarantee the obligations and responsibilities that the Fair may have under the terms and conditions of its agreement with American Express.

Agreement – The Commissioners signed a Memorandum of Agreement between Missoula County and the National Coalition Building Institute (“NCBI”) for the participation of NCBI (co-located with the YWCA) in the Rural Domestic Violence continuation grant for the period July 1, 2003 through June 30, 2005. Under this grant, NCBI does outreach work with the Hmong, Native American, and GLBTI communities on the issue of family violence. The total amount shall not exceed \$46,660.00. All other terms and conditions are set forth therein.

Signature Page – The Commissioners reviewed and signed one (1) Claims Signature Page for the Larchmont Golf Course Accounts Payable Invoice Register dated September 16, 2003, in the amount of \$14,447.26. The Signature Page was returned to the County Auditor.

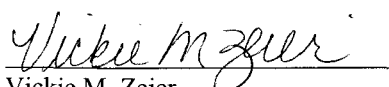
Other items included:

- 1) The Commissioners discussed the Seeley Sewer District. Because the sewer district has never been created by the Department of Revenue for taxable purposes, the assessment cannot be on a 2003 tax bill. The Commissioners voted to take the approximately \$35,000 from the County Investment Pool this year and recoup the funds by assessing the property owners within the Seeley Sewer District on their 2004 tax bill.
- 2) A discussion was held regarding a Miller Creek Jake Brake Resolution. The Commissioners would like to re-advertise and hold another hearing concerning this issue.

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

**FRIDAY, SEPTEMBER 19, 2003**

The Board of County Commissioners did not meet in regular session. Commissioner Curtiss was out of the office all day. In the afternoon, Commissioner Carey traveled to Superior where he attended a meeting of the Mental Health Board held at the Mineral County Courthouse.

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

**MONDAY, SEPTEMBER 22, 2003**

The Board of County Commissioners did not meet in regular session. Commissioners Carey and Curtiss were in Lewistown where they attended the MACo Annual Convention through Wednesday, September 24<sup>th</sup>. Commissioner Evans was out of the office all day.

**TUESDAY, SEPTEMBER 23, 2003**

The Board of County Commissioners did not meet in regular session. In the afternoon, Commissioner Evans accompanied Chuck Wright and Joe Jedrykowski on a tour of roads in the Blanchard Creek area.

Replacement Warrant – Acting Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Families First as applicant for Accounting Warrant #23454, issued June 3, 2003 on the Missoula County 2270 Fund in the amount of \$240.00 (for eight registration fees), which was not received in the mail. No bond of indemnity is required.

**WEDNESDAY, SEPTEMBER 24, 2003**

The Board of County Commissioners did not meet in regular session.

Request for Action – Commissioner Evans signed an Application for Federal Assistance Form, dated September 24, 2003, for the Office of Planning and Grants (“OPG”) which is negotiating for funds that are associated with its grant application to the U.S. Department of Health and Human Services on behalf of Big Brothers Big Sisters (“BBBS”). The approximately \$60,000 grant (with an approx. \$8,000 soft match provided by OPG, and \$7,000 provided by BBBS) will provide funds to mentor children whose parents are incarcerated. The document was returned to Peggy Seel in OPG for further handling.

**THE WEEKLY PUBLIC MEETING SCHEDULED FOR THIS DATE WAS CANCELED AS TWO COMMISSIONERS WERE OUT OF TOWN.**

**THURSDAY, SEPTEMBER 25, 2003**

The Board of County Commissioners met in regular session; a quorum of members was present in the forenoon. Commissioner Curtiss was out of the office September 25<sup>th</sup> and 26<sup>th</sup>; Commissioner Carey was out of the office all afternoon.

Claims List – Commissioners Carey and Evans signed the Claims List, dated September 19, 2003, with a grand total of \$75,948.84. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Evans signed the Claims List, dated September 22, 2003, with a grand total of \$1,313.24. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Evans signed two (2) Claims Lists, dated September 23, 2003, with the following grand totals:

- 1) \$455,591.72; and
- 2) \$59,610.83.

The Claims Lists were returned to the Accounting Department.

Claims Lists – Commissioners Carey and Evans signed three (3) Claims Lists, dated September 24, 2003, with the following grand totals:

- 1) \$67,336.41;
- 2) \$33,905.94; and
- 3) \$37,257.89.

The Claims Lists were returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

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

Agreements – The Commissioners signed one (1) Sanitary Sewer Grant Program Agreements and one (1) Amendment for Assistance to Owner-Occupied Households Secured by Real Property, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. The Agreements provide funds for sewer improvements and connection to the City of Missoula municipal sewer system, as follows:

- 1) Agreement for full assistance, dated September 15, 2003, with Patricia Rose and Crystal Ciarra, 337 Speedway Avenue; and
- 2) Amendment to Agreement for Assistance, dated September 22, 2003, with Rena Dietchler and Vera McCurley, 1 Braaten Place.

All sewer development fees and on-site connection costs and fees are as set forth therein.

Agreements – The Commissioners signed four (4) Memorandums of Agreement between Missoula County and the following agencies for the continued provision of their services in Missoula County:

- 1) Agreement with Watson Children’s Shelter for services for children who are victims of abuse, domestic violence, and neglect, in the amount of \$20,250;
- 2) Agreement with The Parenting Place for the provision of parent education services for families, in the amount of \$10,282;
- 3) Agreement with CASA of Missoula, Inc., for the provision of court-appointed volunteers to provide advocacy services for children, in the amount of \$10,000; and
- 4) Agreement with Partnership Health Center (“PHC”) for basic needs assistance for indigent residents, in the amount of \$210,000. This contract was returned to Terry Delgadillo at PHC for further signatures and handling.

The term for all four agreements will be July 1, 2003 through June 30, 2004. All other terms and conditions are set forth therein.

Resolution No. 2003-099 – The Commissioners signed Resolution No. 2003-099, dated September 25, 2003, a Budget Amendment for the Clerk of District Court in the amount of \$854.00, reflecting a transfer from the Court Education

Trust for and old bill. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Resolution No. 2003-100 – The Commissioners signed Resolution No. 2003-100, dated September 25, 2003, a Budget Amendment for the General Fund – Financial Administration in the amount of \$23,000.00, providing the budget authority for the Abandoned Property Settlement agreed to by the Department of Revenue and the Commissioners at a September 16, 2003 meeting. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Contract – Chairman Carey signed a Contract between Missoula County and NewDawn Technologies for a Case Management System (new software) for the County Attorney's Office. The cost of the software is \$46,115 (\$26,165 in FY 2004; \$9,975 in FY 2005; and \$9,975 in FY 2006.) The document was returned to Jim Dolezal in Information Services for further signatures and handling.

Contract – The Commissioners signed an Employment Contract between the Missoula City-County Health Department and Lisa Bollen Lovejoy, M.D., for her services as a physician for clinical care at Partnership Health Center ("PHC"). The total compensation shall be \$66.29 per hour, as set forth therein. The term will be July 1, 2003 through June 30, 2004. The document was returned to Terry Delgadillo at PHC for further signatures and handling.

Resolution No. 2003-101 – The Commissioners signed Resolution No. 2003-101, dated September 25, 2003, correcting the Fiscal Year 2004 Budget, establishing a permissive medical levy as discussed during the budget cycle. The Resolution follows (in full):

**RESOLUTION NO. 2003-101  
FIXING CORRECTED MILL LEVIES FOR MISSOULA COUNTY  
FOR FISCAL YEAR 2003-2004**

WHEREAS, on August 27, 2003, the Board of County Commissioners adopted Resolution No. 2003-087 which set the Fiscal Year 2003-2004 budget and set mill levies based on certified mill values. Subsequent to that date, it was noted that the accounting for the Permissive Medical Levy under HB 409 and amended by SB 478 did not accurately reflect the intent of the Board of County Commissioners.

WHEREAS the Permissive Medical Levy budget is now appropriately included in the Budget Summary;

NOW, THEREFORE, BE IT RESOLVED that budgeted expenditures will not be increased from Resolution No. 2003-087.

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	36.74	A, B and C
Poor Fund	4.58	
Bridge Fund	4.26	
Weed Fund	2.11	
Child Daycare	0.29	
Fair Fund	0.31	
District Court Fund	3.89	
Park Fund	1.06	
Library	9.29	
Planning & Grants	2.94	
Aging Fund	1.16	
Extension Fund	1.52	
Mental Health Fund	0.50	
Public Safety	37.27	
Permissive Medical Levy	1.69	
Museum Fund	2.66	
Judgment Levy	0.81	
Technology Fund	2.29	
Risk Management	2.35	
<u>SUB-TOTAL</u>	<u>115.72</u>	
<u>MISSOULA COUNTY-WIDE DEBT SERVICE</u>		
Jail Bond	6.50	
Risk Management Bond	0.62	
<u>SUB-TOTAL</u>	<u>7.12</u>	
<u>TOTAL COUNTY-WIDE &amp; DEBT SERVICE LEVIES</u>	<u>122.84</u>	
Road Fund	16.26	
Health Fund	7.33	
Animal Control	0.98	
Permissive Medical Levy (County Only)	0.76	
TOTAL COUNTY-ONLY LEVY	25.33	

DATED THIS 25th DAY OF SEPTEMBER, 2003.  
BOARD OF COUNTY COMMISSIONERS

s/\_\_\_\_\_  
Bill Carey, Chair

s/\_\_\_\_\_  
Jean Curtiss, Commissioner

s/\_\_\_\_\_  
Barbara Evans, Commissioner

APPROVED AS TO FORM & CONTENT:

ATTEST:

s/\_\_\_\_\_  
Michael W. Sehestedt,  
Deputy County Attorney

s/\_\_\_\_\_  
Vickie M. Zeier, Clerk and Recorder

Certification of Acceptance – Chairman Carey signed two (2) Missoula County Department of Public Works Certifications of Acceptance for County Maintenance, dated September 25, 2003, for the following:

- 1) ACM. No. 2003-0001, Airway Boulevard, Road No. L-000720-0, T 13 N, R 20 W, Section 36. The limits of acceptance are .303 miles from the intersection with Keil Loop thence southeasterly 1600 feet to the cattle guard.
- 2) ACM. No. 2003-0002, Beeler Road, Road No. L-000810-1, T 15 N, R 22 W, Section 25. The limits of acceptance are .128 miles from the intersection with Mullan Road thence northerly 673.58 feet to the intersection with Huson Road.

The documents were returned to the Public Works Department.

Addendum & Permit – The Commissioners signed an Addendum, dated September 25, 2003, to the Special Use Permit from the Swan Lake Ranger District (with Missoula County and the Swan Valley American Legion Post 63), which reauthorizes use of the Condon Ball Field for another ten years. Not previously addressed in the lease, the addendum outlines weed control and pesticide issues that are the responsibility of the lessee of the property; the new U.S. Department of Agriculture Forest Service Special Use Permit (#SWA73) reflects those changes. The new Permit expires on December 31, 2012. The document was returned to Lisa Moisey, Parks Coordinator, for further signatures and handling.

Closeout Certification – Chairman Carey reviewed the Project Completion Report and signed a *Conditional* Closeout Certification – Unpaid Costs and Unsettled Third Party Claims, dated September 25, 2003, regarding the Montana Department of Commerce Community Development Block Grant (CDBG) #F000-08 (Pyramid Lumber Project). The certifications states that 1) there are no unpaid costs and unsettled third-party claims against this grant; and 2) the estimated amount of the CDBG portion of the audit cost required for final closeout is \$0.00. The document was returned to Jenifer Blumberg in the Office of Planning and Grants for further handling.

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

**FRIDAY, SEPTEMBER 26, 2003**

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

Claims List – Commissioners Carey and Evans signed the Claims List, dated September 18, 2003, with a grand total of \$3,290.00. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Evans signed three (3) Claims Lists, dated September 19, 2003, with the following grand totals:

- 1) \$38,602.21;
- 2) \$270.00; and
- 3) \$1,541.50.

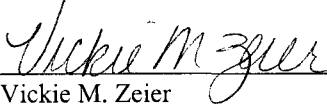
The Claims Lists were returned to the Accounting Department.

Claims Lists – Commissioners Carey and Evans signed three (3) Claims Lists, dated September 23, 2003, with the following grand totals:

- 1) \$3,105.00;
- 2) \$60.00; and
- 3) \$1,480.00.

The Claims Lists were returned to the Accounting Department.

Claims List – Commissioners Carey and Evans signed the Claims List, dated September 25, 2003, with a grand total of \$17,612.03. The Claims List was returned to the Accounting Department.

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

**MONDAY, SEPTEMBER 29, 2003**

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 September 26, 2003, with a grand total of \$30,245.70. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Evans signed the Claims List, dated September 29, 2003, with a grand total of \$35,577.00. The Claims List was returned to the Accounting Department.

Plat – The Commissioners, as Owners and Commissioners, signed the Plat of Missoula Development Park, Phase 5A, a subdivision located in the NE¼ of Section 1, T 13 N, R 20 W, and the SE¼ of Section 36, T 14 N, R 20 W, PMM, Missoula County, a total area of 3.32 acres, with the owner/developer being the Missoula County Airport Industrial District.

Plat and Agreement – The Commissioners signed the Plat and Subdivision Improvements Agreement and Guarantee for Pony Place, a seven-lot subdivision of Tract 4 of Roseland Orchard Tracts No. 3, located in the NW¼ of Section 25, T 13 N, R 20 W, PMM, Missoula County, a total acreage of 5.20 acres, with the owner/developer being Norman P. Creighton 1999 Trust. The Improvements Agreement is for public walkway construction and paving, drainage improvements, dry laid sewer main, community subsurface wastewater treatment system, fire suppression water storage system, and required signage; said improvements shall be completed no later than May 30, 2004. The estimated costs are \$217,700, and have been guaranteed by a Letter of Credit from First Security Bank of Missoula.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 19 - Pay Date: September 19, 2003. Total Missoula County Payroll: \$947,609.69. The Transmittal Sheet was returned to the Auditor's Office.

Resolutions – The Commissioners signed three Resolutions, dated September 29, 2003, abandoning certain property located in Frenchtown, Montana (all in Section 34, T 15 N, R 21 W, PMM), as the following streets and alley are not needed for public right-of-way purposes:

- 1) Resolution No. 2003-102, abandoning Anjalo Street between Blocks 6 and 7;
- 2) Resolution No. 2003-103, abandoning Marion Street between Blocks 5 and 7; and
- 3) Resolution No. 2003-104, abandoning the Alley in Blocks 6 and 7.

**TUESDAY, SEPTEMBER 30, 2003**

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Evans attended a meeting of the Milltown Superfund Citizen Working Group held at St. Ann's Catholic Church in Bonner. Commissioners Carey and Curtiss attended a meeting with the residents of Meadows West at the Frenchtown Fire Hall regarding a potential RSID.

Claims List – The Commissioners signed the Claims List, dated September 23, 2003, with a grand total of \$733.78. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated September 25, 2003, with a grand total of \$2,409.54. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated September 29, 2003, with the following grand totals:

- 1) \$50,415.07; and
- 2) \$42,411.32.

The Claims Lists were returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated September 30, 2003, with a grand total of \$15,344.17. 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. 2003-105 – The Commissioners signed Resolution No. 2003-105, dated September 30, 2003, a Budget Amendment for the Sheriff/Detention Department in the amount of \$13,563.00, reflecting Grant revenue received for the purchase of safety vests. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Contract Amendment – Chairman Carey signed an Amendment, dated September 30, 2003 to the Community Development Block Grant Contract #MT-CDBG-ED00-08 (Pyramid Mountain Lumber Co.) between Missoula County and the Montana Department of Commerce, effective March 22, 2001. This Amendment extends the project completion date to December 31, 2003. All other provisions of the Contract remain in full force and effect. The document was returned to Jenifer Blumberg in the Office of Planning and Grants for further signatures and handling.

Resolution No. 2003-106 – The Commissioners signed Resolution No. 2003-106, dated September 30, 2003, a Resolution for inclusion in Rural Special Improvement District ("RSID") #8458 (Sunset West Water System) and RSID #8925 (Sunset West Water Maintenance), as a result of the Sunset Water system construction requiring an easement across property located in the Meadows West Barron O'Keefe area, owned by Mr. Daniel Anderson.

Agreements – The Commissioners signed two (2) Memorandums of Agreement between Missoula County and the following agencies for the continued provision of their services in Missoula County:

- 1) Agreement with Missoula Aging Services for the planning, coordination and delivery of meals to under aged disabled persons, in the amount of \$9,000; and
- 2) Agreement with WORD/Family Basics for the provision of basic needs assistance for indigent residents, in the amount of \$12,000.

The term for both agreements will be July 1, 2003 through June 30, 2004. All other terms and conditions are set forth therein.

Proclamation – The Commissioners and Mayor Mike Kadas signed a Proclamation declaring October 2003 as *Domestic Violence Awareness Month*, urging all citizens to actively participate in the scheduled activities and programs sponsored by the Missoula Family Violence Council, the Crime Victim Advocate Program, and the YWCA to work toward the elimination of violence against women and children.

Letters – The Commissioners signed two (2) letters, dated September 30, 2003 to Jim Morton, Executive Director, Human Resource Council (“HRC”), regarding the following: 1) Thanking him for providing information relative to the 2004 and 2005 Community Services Block Grant Work Plan and Budget, and commending him and his organization for the good work they do on behalf of those who need assistance; and 2) Acknowledging that the Commissioners met with him on September 30, 2003 and concurred with the allocations made by HRC from the Emergency Shelter Grants Program for Fiscal Year 2004.

Letter – The Commissioners voted to participate (as one of seven counties) in the formation of the Coalition for Interim Assistance (to act as an agent of the state) relating to the SSI/IAR Program. Commissioner Curtiss signed a letter to Hank Hudson, Administrator, Child and Family Services, Helena, Montana, dated September 29, 2003, agreeing to chair this consortium and oversee the operations of each participating county in accordance with the Montana-SSA agreement and the Program Process Plan.

Other items included:

- 1) The Commissioners voted (with Commissioner Evans abstaining) to authorize payment of invoices for the Missoula City-County Annual Board and Commission Picnic held on August 21, 2003. It was agreed that in the future the Commissioners will communicate to the City that the County will not pay for alcoholic beverages.

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

WEDNESDAY, OCTOBER 1, 2003

The Board of County Commissioners met in regular session; all three members were present. At noon, Commissioner Curtiss participated in the Family Violence Council's Award Ceremony held in the Courthouse Rotunda. In the evening, Commissioner Evans attended the Grand Opening Ceremony at INSA (Inland Northwest Space Alliance) at their office on North Reserve.

Claims List – The Commissioners signed the Claims List, dated September 30, 2003, with a grand total of \$1,288.00. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated October 1, 2003, with a grand total of \$898.08. The Claims List was returned to the Accounting Department.

Replacement Warrant – Chairman Carey examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Nick Eldridge as applicant for Missoula County Detention Facility Warrant #13899, issued September 9, 2003 on the Missoula County Detention Fund in the amount of \$103.00 (for commissary refund). No bond of indemnity is required.

#### CHIEF ADMINISTRATIVE MEETING

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

Agreements – The Commissioners signed six (6) Memorandums of Agreement between Missoula County and the following agencies for the continued provision of their services in Missoula County:

- 1) Agreement with Missoula Youth Homes, Inc. for services for damaged and troubled children with legal, emotional, social, behavioral, and family problems, in the amount of \$36,300;
- 2) Agreement with the Poverello Center/Joseph Residence for basic needs assistance for indigent residents, in the amount of \$33,000;
- 3) Agreement with Friends to Youth for counseling and education services for non-SED youth and their families, in the amount of \$15,000;
- 4) Agreement with the Missoula Food Bank for basic needs assistance for indigent residents, in the amount of \$27,040;
- 5) Agreement with Child Care Resources, Inc. for technical assistance and training to child care providers to better meet the developmental needs of young children; and to protect, promote, maintain and improve the health of children in day care settings, in the amount of \$54,620; and
- 6) Agreement with the Western Montana Mental Health Center for mental health crisis response and stabilization services (through the Crisis Response Team and the Stephens House), in the amount of \$165,000.

The term for all six agreements will be July 1, 2003 through June 30, 2004. All other terms and conditions are set forth therein.

Agreements – The Commissioners signed two (2) Sanitary Sewer Grant Program Agreements for Assistance to Owner-Occupied Households Secured by Real Property, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. The Agreements provide funds for sewer improvements and connection to the City of Missoula municipal sewer system, as follows:

- 1) Agreement for full assistance, dated September 19, 2003, with Mary Lou Craft, 338 Montana Avenue; and
- 2) Agreement for partial assistance, dated September 12, 2003, with Sandra T. Tarno, 985 Speedway Avenue.

All sewer development fees and on-site connection costs and fees are as set forth therein.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-007 for the Health Department (environmental health), reflecting a transfer of \$42,022 from temporary salaries to permanent salaries, merit and fringe, for the addition of one registered sanitarian to environmental health.

Resolution No. 2003-107 – The Commissioners signed Resolution No. 2003-107, dated October 1, 2003, rezoning property (Cooney/Lincoln) from unzoned to C-A1. The property is located on the north side of I-90 and East of Grant Creek Road and is described as portions of Government Lots 1 and 2, SE¼ NE¼ and the SW¼ NE¼ of Section 5, T 13 N, R 19 W, PMM.

Subdivision Approval – At their October 1, 2003 Planning Status meeting with the Office of Planning and Grants, the Commissioners approved and signed a letter, dated October 7, 2003 to Ted Luark, Huson, Montana, approving his request for the Luark Subdivision for Lease or Rent, based on the findings of fact and subject to the Conditions of Approval attached thereto. The plan approval expiration date is October 1, 2004.

Subdivision Approval – At their October 1, 2003 Planning Status meeting with the Office of Planning and Grants, the Commissioners approved (with Barbara Evans abstaining) and signed a letter, dated October 7, 2003 to Michael and Elain Rose, Frenchtown, Montana, approving their request for the Elaine Subdivision for Lease or Rent, based on the findings of fact and subject to the Conditions of Approval attached thereto. The plan approval expiration date is October 1, 2004.



PUBLIC MEETING – October 1, 2003

BOOK 004 PAGE 0139

The Public Meeting was called to order at 1:30 p.m. by Chairman Bill Carey. Also present were Commissioner Jean Curtiss, Commissioner Barbara Evans, Deputy County Attorney Colleen Dowdall and County Public Works Director Greg Robertson.

Pledge of AllegiancePublic Comment

Phyllis Jamison: Phyllis Jamison from Clinton and I want to thank the Missoula County Commissioners for whatever steps were taken to open the doors of the brand new Animal Shelter to Missoula County cats. The opening of the new shelter and the hiring of a new Animal Control Director is the perfect time to turn a new leaf and change the long standing culture of Missoula Animal Control that has for years refused to accept virtually all homeless cats into the shelter. The fact that the new Director told me yesterday that County cats will be admitted to the Shelter is an enormous step forward and if it was accomplished without having to pass any legislation, that shows the Commissioners acknowledged that foisting the entire responsibility of controlling the stray cat population problem onto the shoulders of the Humane Society is not the ethical thing to do. It is also not the responsible thing to do because many people will not drop off a cat to the Humane Society because they cannot pay the \$25 fee that the Humane Society must charge because it receives no tax dollars. Unfortunately, Mr. Ed Franceschina, the new Animal Control Director, is still promoting the long standing Missoula Animal Control culture of employing every hedge, ploy and device imaginable in order to refuse rather than admit cats into the Shelter. For example, Mr. Franceschina told me yesterday his Shelter will now accept County cats but he will not accept all County cats. He told me yesterday he and his staff will exercise discretion as to which County cats will be accepted. He said he will not accept any County cats that are pets, only strays. He said he will not accept any City cats either that have been pets and he said that has always been the policy at Missoula Animal Control, and he said he will also not accept any dogs that have been pets. All of these dogs and cats he will continue to refer to the Humane Society. Mr. Franceschina acknowledged that many people will not or cannot pay a \$25 drop off at the Humane Society and will instead move away, leaving the cat to suffer in the elements and to breed uncontrollable, producing endless litters of feral kittens, which has created the extreme stray over cat population in Missoula today. Mr. Franceschina said that that is where he will use his discretion, to determine whether a person calling on the phone or bringing a pet to the shelter is "the type of person that would abandon a pet rather than taking it on over to the Humane Society and paying the fee." I said, you know, you really can't analyze a perfect stranger to know whether they would abandon a pet on the street or not, and he was, like, that's true. I've had very painful personal experiences of citizens abandoning pets because Animal Control refused to accept them. The small trailer park where I am currently trapping feral cats has at least 50 to 75 abandoned and feral cats, with three new litters of kittens just having been born and this is just a small trailer park and one that is fairly nicely kept up, but citizens driving by abandon cats at the trailer parks throughout the City and County because Animal Control refuses to accept unwanted pets. There are hundreds and indeed thousands of feral cats colonies breeding all throughout Missoula City and County, but to just give one more example, the wildest, most dangerous cats I have ever trapped were struggling to survive under the steps at Fort Missoula and when the Forest Service Manager gave me permission to trap the cats, he said that for years, people have abandoned cats at Fort Missoula. He has seen the family van typically drive by in the coldest snow of winter and watch the family pet cat being pushed out into the snow as the van drives away. The litters from these abandoned cats have been turned feral and it's a very sad thing to have to take them over to the Humane Society. I just want to make two more points and I'll be brief. These feral cats are, or any abandoned, scared cat, is not only suffering but is also highly dangerous to humans. I suffered two very painful, very serious cat bites that were almost \$1,000 in medical bills and I did not even have the rabies shots that were recommended. With one wound, I was told I needed to be hospitalized, because the best, most expensive antibiotics weren't working and the doctor could clearly see the red infection spreading up my arm toward my heart. I refused to be hospitalized because I couldn't afford it so the doctor said the only alternative was to put my arm in a cast to immobilize the infection and the doctor said my cat wound was not as bad as many she sees. All the medical personnel I talked to at both Community and St. Pats, without exception, stated cat bites and scratches are far more serious than dog bites and that many times the victim has to be hooked up to I.V.'s and be admitted to the Emergency Room for further treatment. If Animal Control refuses to accept any cat for any reason, then the County and the City will be liable for all the expenses related to injuries suffered by citizens, including medical bills, lost wages and possibly special fencing or other protective measures some people have had to put up to protect their children. Lois Herbig said her neighbor's child lost part of a finger to a cat. On one final point, Mr. Franceschina said he would also turn away County cats in order to keep some cages open to receive City cats because of the City law. That's not necessary. The next cat, whether City or County, should be given the next cage and if the cat has to be euthanized, that is far more humane than forcing a cat back out on the street to continue breeding endless litters of feral kittens and to continue to suffer. Eventually, we won't have to have so many put down after the Animal Control has had a chance to make a dent in this problem, the huge overpopulation problem of stray cats. The essential bottom line is that Animal Control needs to adopt the same policy that other shelters around the country have adopted, that no cat will be refused for any reason. The last thing I want to do is start a class action lawsuit, but this very serious problem needs to be resolved. The Missoulian published an article called "The Dog Bite King" about an attorney who has made a fortune recovering losses for dog bite victims and given the fact that cat bites and scratches are far more serious, it's just a matter of time until a Missoula attorney takes the City and County to task if Animal Control continues to find loopholes and various ways to circumvent their responsibility to accept every single cat that is brought to them for care, that's every single cat. Thank you very much.

Commissioner Evans: Phyllis, I'd like to tell you some things. You have been heard in the past and I'd like to publicly thank all the veterinarians from the surrounding areas and in Missoula that participated in the Spay and Neuter Clinic. I particularly want to thank Dr. Applebury from Hamilton. He and his wife have done yeoman's work in doing spay and neuter things. We received recently a bill for the \$500 that Missoula County contributed over and above the other costs that were paid for spaying and neutering animals. They did 326 animals in their clinic. So that's 326 less litters that we're liable to see. I was unaware of this supposed policy, I'll certainly check into it and while you have interpreted it one way, he may have meant it another and certainly we would, none of us, like to see the animals shoved out into the cold world to suffer, but, we have more cages now than we used to have, but we still have limitations on what our taxes can pay for and while I would love to have a cage for every animal, we don't have them and so we're hoping, and I'm speaking only for me, that we can reduce the amount of animals that are unwanted and therefore, at some point, maybe killed, I don't like the word euthanized, that's a nice word that covers up a not so nice deed. But, at this point, we are where we are and we can

do what we can afford and we will hope to have support from all the veterinarians and all the folks that have animals that need to be spayed or neutered so we can reduce the amount of animals we have to kill.

Phyllis Jamison: Yes and if I can just make a comment to your comment, is that I appreciate the fact that you weren't aware of the problem or the way he's interpreting it, whatever. I know that Jean Curtiss and Bill Carey said last week, last time I spoke, they weren't aware either and now some action's been taken, that's good and it's appropriate. I also appreciate the fact that the spay and neuter clinics are in effect and work, that's kind of a one time thing that does help enormously but it's not, we need an ongoing solution. But I did want to clarify that I am not asking for, or ever have asked for, a cage for every animal. Very, very sadly, that's not possible and very, very sadly some animals do have to be euthanized. What we can do and what needs to be done is accept every animal into the facility, whether it's a County cat, whether it's a City cat, whether it's been a pet or not, and accept it into the facility. If it has to be euthanized, then that's far more humane for that cat than to have it be going back out to suffer in the elements, not being able to be treated in case it gets sick, which many of them do and to continue to breed endlessly. That's far more humane. So, I'm just asking to be accepted and down the road, as Animal Control accepts its responsibility to accept every cat into the facility, there will be far fewer euthanasias, just as now it's virtually unheard of to euthanize a dog, because we've had dog control in the City and the County for years as an ongoing thing. We have not had that for the cats until just now, this year the City ordinance has taken effect. So, that's all I'm asking, just admit them into the shelter and let's begin the responsibility that should have been taking place a long time ago.

Commissioner Curtiss: Phyllis, after you were here the last time, we did check with Animal Control and the date we received correspondence back, there were 31 cats in the Shelter, they all came from Missoula County, 22 from the City and 9 from the County. It does say they will be working on the cat intake policy. Our problem is that we also don't have a crematorium like some places do, so we can't, it costs us money to take them somewhere to have them euthanized. It's a problem we're aware of.

Phyllis Jamison: You said there were County cats that were accepted. I know there seems to be some misunderstanding on that, I don't know what it was. I know that the Acting Director at the time, Elaine, did make an interview on TV where she stated that County cats were not going to be accepted.

Commissioner Curtiss: This was the 24th of September, so it might have been after that.

Phyllis Jamison: Okay, and that also she was telling people on the telephone and I had two personal experiences where when I took the cat in I was told that if it was a County cat I'd have to turn around and take the cat back out to my car. Since you brought the subject up, I will mention that Elaine got very upset with me on the phone yesterday and she said, I never said you could not bring a County cat to the shelter. Well, actually, that's recorded on television, I'm sure hundreds of other people besides myself heard it, and, as I say, I had a personal experience of her telling me that if it's a County cat you'll have to take it back out to your car, as well as being told that on the phone. I didn't want to mention that myself unless it came up because I don't want to quibble over something that hopefully as long as the policy has changed, that's the most important thing, as long as County cats are being accepted in now, but we need to have all County cats accepted, whether they're pets or not and whatever, and I would add that you don't have to have a crematorium on-site, you can.

Commissioner Curtiss: No, but we have to pay for it, that's what Barbara was talking about with the tax dollars.

Phyllis Jamison: Well, you can have technicians or whatever, they do have that, that can at least euthanize the animals if necessary, and that's not something, that's an added expense that they don't have to assume right now, they can take on that responsibility themselves. It would be kinder to the animal too, rather than make them make an extra trip to a vet, you know, it would be much kinder to the animals.

#### Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists (from 9/18/03 to 10/1/03) in the amount of \$1,348,108.73. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### Bid Award: Rejection of Bids for RSID 8472 (Spring Hill Road) – Postponed from September 17, 2003

Greg Robertson presented the staff report.

Construction bids for RSID 8472, Spring Hill Road paving and culvert replacement, were opened on September 8, 2003, with the following results:

Green Diamond	\$151,501.43
AAA Construction	\$176,390.00
JTL Group	\$160,774.00
Mickelson Rock Products	\$147,406.04

The low bidder was Mickelson Rock Products in the amount of \$147,406.04. The engineer's estimate was \$100,000, so the lowest bid actually exceeds what is available. The reason for the higher amount was that toward the latter end of the bidding process, a permit was received from Fish, Wildlife and Parks. It required fish passage which increased the culvert size needed to accommodate that, which increased the bid by about \$50,000. That was not accounted for in the original RSID estimates. Fish, Wildlife and Park did participate financially, however the amount was not enough to cover the increased cost. Based on this and discussions with the leadership that petitioned the RSID, it is the recommendation of Public Works to reject all bids and reform the district at a later date.

Commissioner Curtiss moved that the Board of County Commissioners accept the staff's recommendation and reject all bids for RSID 8472, Spring Hill Road Paving and Culvert Replacement, as all bids are above the engineer's estimate and exceed the amount of money available. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

**Hearing (Certificate of Survey): Wilkinson Family Transfer**

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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 B18-A-3 of COS 2571, located in the northwest one-quarter of the northwest one-quarter of Section 14, Township 11 North, Range 20 West, on Maiden Lane between Queen Anne and Falcon.

Annetta Wilkinson has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 2.62 acres in size located near Florence, Montana. Annetta proposes to create one approximately 1.31 acre parcel for transfer to her husband, Lyle Wilkinson, for residential purposes and keep the remaining approximately 1.31 acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 1218	1977	20 Acres or Greater	Schroeder Ranch	
COS 1219	1981	Family Transfer	Kenneth C. Hayes	

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

Annetta Wilkinson was present and came forward to answer any questions the Board may have.

Chairman Carey stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. He asked Ms. Wilkinson if she was going to transfer this land to her husband.

Annetta Wilkinson stated that was her intention, this was not an attempt to evade subdivision regulations.

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 Annetta Wilkinson to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Chairman Carey stated that Ms. Wilkinson would receive a letter of approval within a week or two. All necessary permits and other requirements need to be obtained to build on the land. The approval today is only for the division of land; it does not guarantee access or services, nor does it grant Health Department, zoning or planning approval.

**Hearing (Certificate of Survey): Kammerer Family Transfer**

Chairman Carey opened the public hearing.

Colleen Dowdall presented the staff report.

This is a consideration of a request to create two family transfer parcels for that parcel described as Tract 10-A of COS 1787, located in the north one-half of Section 30, Township 14 North, Range 20 West.

Jack L. and Linda Kammerer have submitted a request to create two parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately five acres in size, located near Missoula, Montana. Jack and Linda propose to create a one acre parcel for transfer to their son, Jody Kammerer (Tract 10-A2), for residential purposes; create a one acre parcel for transfer to their daughter, Jacqueline Opsahl (Tract 10-A1), for residential purposes and keep the remaining approximately three acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 1465	1978	20 Acres or Greater	Bruce F. Dailey	
COS 1787	1979	Occasional Sale	Edward Sager	

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

Linda Kammerer was present and came forward to answer any questions the Board may have.

Chairman Carey stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. He asked Ms. Kammerer if she was going to transfer this land to her children.

Linda Kammerer stated that was her intention, this was not an attempt to evade subdivision regulations.

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

Commissioner Curtiss moved that the Board of County Commissioners approve the request by Jack L. and Linda Kammerer to create two parcels by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Chairman Carey stated that Ms. Kammerer would receive a letter of approval within a week or two. All necessary permits and other requirements need to be obtained to build on the land. The approval today is only for the division of land; it does not guarantee access or services, nor does it grant Health Department, zoning or planning approval.

**Hearing: Hawthorn Springs (97 lots on 518 acres) – Between the Wye and Frenchtown, north of I-90 – Postponed from September 17, 2003**

Jackie Corday, Office of Planning and Grants, presented the staff report.

This is a request from H Lazy Heart, LLC and Patchy, Inc., represented by Ron Ewart of Eli & Associates, to subdivide the former Peterson Ranch, a total of 518 acres, into 97 lots. The property is located north of Interstate 90 between the Wye and Frenchtown, approximately 2 miles southeast of Frenchtown. The proposed subdivision would create 93 lots that average about three-quarter acres in size and 4 large lots ranging from 4 to 298 acres.

The property upslopes from the Frontage Road and consists of open grass fields that were used for cattle grazing. The 93 smaller lots are located on a series of benches situated between two deep ravines that have spring water sources and riparian vegetation. The western ravine will be part of a large common area (which far exceeds the parkland dedication requirements) and the eastern ravine lies within one of the large acreage lots. The surrounding land uses are rural residential to the west, agricultural uses to the east and south and forest land to the north.

The lots will have individual septic systems. The developer plans to construct a private community water system. The applicants have purchased land immediately southeast of the property across I-90 and have drilled two high-producing wells. The applicants have obtained a permit from the Montana Department of Transportation to bore under I-90 to reach the subdivision.

Frenchtown Rural Fire District serves the property, with a station approximately two miles west of the property. The applicants will install fire hydrants throughout the subdivision and staff has recommended a condition that the Fire District review their placement prior to final plat approval. Children will attend Frenchtown schools.

The proposed subdivision accesses directly off the Frenchtown Frontage Road at two existing access points. The western access point, Wilson Lane, currently serves 5 residences. The applicant proposes relocating the first 190 feet of Wilson Lane within the Bunchgrass Lane public right-of-way. Wilson Lane will then junction off to the west and become a private road again. The applicants propose to pave Bunchgrass Lane to 24 feet wide with drainage swales on both sides. Because these plans are not clear from either the application or the preliminary plat, staff is recommending a condition of approval that the relocation occur as stated above and that Public Works review and approve the intersection plans of Wilson Lane and Bunchgrass Lane.

The eastern access point to Frenchtown Frontage Road, the proposed Junegrass Way, is the existing gravel ranch road. The applicants propose to improve it to a 24 foot wide paved public road with drainage swales and a walkway on one side. The width standard for public roads outside of the Urban Growth Area serving 81-200 dwelling units is 32 feet. Bunchgrass Lane will serve over 81 residences. The applicant has requested a variance from this standard and Public Works and OPG support the variance due to the sloping topography. Both Public Works and OPG also support the variance to cul-de-sac length as it was preferred to the alternative of crossing the eastern draw twice.

The applicants plan to provide separate bus and mailbox pullouts throughout the subdivision. Staff has recommended a condition that the pullout plans be reviewed and approved by Public Works. Planning Board revised the condition to include pullouts for emergency vehicles.

The applicants have proposed to install a hard-packed gravel, variable width boulevard walkway along one side of the roads within the subdivision and along Frenchtown Frontage Road between Bunchgrass Lane and Junegrass Way. The walkway will be wider in some locations and narrower in other (but at least 4 feet wide), depending on the topography. The Hawthorn Springs covenants require the Homeowners Association to maintain the walkways.

Maintenance of the gravel surface was a concern to Peggy Anderson, Frenchtown Schools Superintendent, and Public Works, as they may not be made passable during the winter. The Health Department also recommended that the walkways be made of asphalt "for durability and to accommodate a wide range of uses." Based upon the recommendations of these three agencies, staff has recommended a condition of approval that the walkways be paved.

The preliminary plat indicates four 30 foot wide public pedestrian easements for direct access to the common area: between Lots 30 and 31 at the end of the Bunchgrass Court cul-de-sac; between Lots 57 and 58 midway up the subdivision; and two more in the upper cluster of lots between Lots 64 and 65 and Lots 70 and 71. Staff is concerned that the residents may not know of their right to use these easements unless they are mentioned in the covenants and a pathway is constructed by the developer within two years of final plat filing. Articles 3-2(8)(C) and 3-8(8)(D) require pedestrian facilities to provide access to common areas. Staff has recommended a condition of approval to amend the covenants to include construction by the developer of 3 foot wide gravel pathways to be maintained by the Homeowners Association.

The property and adjacent hillsides are designated in the 1992 Inventory of Conservation Resources as winter range for elk, mule deer and white tail deer. Montana Fish, Wildlife and Parks (FWP) stated that about 60 elk and numerous deer utilize the north half of Section 6 and the south half of Section 31. "Black bears, mountain lion, numerous raptor and songbird species and a number of small mammals can also be found there." During a site inspection, staff noted large quantities of black bear, deer and coyote scat throughout the eastern draw and on the bench near Lots 75-79. Staff also observed raptors hunting the upper bench area, an elk grazing on the eastern side of the eastern draw and a coyote or fox in the western draw.

From the very beginning of this project, how to protect and mitigate impacts to wildlife and wildlife habitat has always been the main issue. The Planning Board split evenly on whether or not to approve this subdivision based mainly on their concerns with wildlife and hillside development.

Based upon meetings with the applicants, their representative and FWP, staff drafted revised wildlife mitigation conditions for the Commissioners to consider today. In addition to the conditions suggested in the memo, staff has recommended conditions to further protect the riparian resources in the draws by requiring the delineation of buffer zones and to clarify access restrictions in the covenants for the common area/western draw.

Planning Board also made a change to the variance request to allow Lot 21 to be a "through lot." Planning Board suggested that the variance be broader to allow any "through lots" instead of limiting it to Lot 21.

Chairman Carey opened the public hearing.

Ron Ewart, Eli and Associates, developer's representative, thanked Jackie for her work on this project. A Development Team was created to work on this proposal, including Tom Deveny and Kathy Knudsen, the owners; Terre Meinershagen, an architect; Jennie Meinershagen, a landscape architect; Steve Inabnit, project surveyor; Scott Johnson, project coordinator; Kirby Christian, attorney; and George Sherwood, a Realtor with Montana Preferred Properties. They are in agreement with the conditions as recommended by the Office of Planning and Grants. The 93 smaller lots will be clustered on about 25% of the property. The development is designed to fit on the land and make the best use of the topography while setting aside a good amount of open space, common areas, conservation easements, "No Build" areas and buffer zones. The riparian areas, steep slopes and wildlife cover and watering areas will be preserved and protected. Tom and Kathy have done a lot toward weed control and that will be an ongoing program. They have restricted human activity and enhanced the wildlife habitat and forage areas. They also plan to enhance the riparian areas and woody draws as well. The developed areas are on the most level portions. The upper lots served by the loop road are on a plateau, it is somewhat higher but fairly level. The roads will all be paved to 24 feet wide, with an 8% grade or less and there will be nice pedestrian facilities. There are very comprehensive covenants proposed, including approximately 10 pages of design standards. A Homeowners Association and Architectural Control Committee will be formed. The homes will be custom designed, stick built only. They will be built on sloping, but not steep, ground and will fit into the hillside. All home designs must go through the Architectural Control Committee. The site is approximately 2 miles from the Frenchtown exit and approximately 4 miles to the Wye. Several business owners in Frenchtown are in favor of more development. Services are available, as well as churches and schools. The main Frenchtown Fire Station is nearby. Underground utilities are available under the Frenchtown Frontage Road. The transportation system from the subdivision is also excellent. A person can quickly access downtown Missoula or Frenchtown. The ease of accessibility is excellent. The design of the subdivision integrates clustering and open space. The finished project will look great. Tom and Kathy have assembled a team that will ensure a pleasing subdivision. They plan to build their home and live on this property and retain ownership of the larger lots.

Tom Deveny stated that he and his partner Kathy Knudsen were the owners and developers of Hawthorn Springs. He and Kathy are both native Montanans with agricultural backgrounds. They are both graduates of the University of Montana and residents of Missoula for over 30 years. He is a Certified Public Accountant with Boyle, Deveny & Meyer, PC. and Kathy does genetic research on fish at the University. They are well connected in the community and provide support to many non-profit organizations. They are founding members of Citizens for a Weed Free Future and Kathy continues to serve on that Board. He is the Treasurer of the Big Sky Upland Bird Association and a member of other organizations in town. They are presently active in weed control and riparian restoration on the Dodd Homestead up Butler Creek. Hawthorn Springs is a well planned and designed development. Many people deserve credit, including Jackie Corday at OPG. He hoped the Commissioners would see this development as a significant improvement to the existing weed-infested disaster that they purchased. The approach from the start has been to do this right. They hope to build their new home on Lot 73. They are excited about the prospect of enhancing the native grassland and the riparian area and improving the habitat for the wildlife. The need for a long range plan for the area between Highway 93 and Mill Creek is evident. They support the planning process and hope to be a positive influence in the area's future. He thanked the Board for their time and asked them to support his development.

Jennie Meinershagen stated she was a landscape architect with Rocking M Design. She has known Tom and Kathy for some time and their love of the land and commitment to making it better are evident. She has been involved as a consultant on the subdivision since March 2003. Her role has been to advise Tom and Kathy on methods that will mitigate the impacts the development will have on the landscape through the use of covenants and design standards. Those associated with this proposal address the form of the land through specific grading of the homesite, the form of the built structures, methods of vegetative reclamation and individual homeowner requirement that control site clutter and light pollution. She has also consulted with Tom and Kathy to recommend plant species and planting methods for the riparian management area and in the revegetation plan.

Terre Meinershagen stated he was an architect with Rocking M Design. They have been friends with Tom and Kathy for quite awhile and involved as consultants on this project since early this year. Missoula County has a need for additional residential development as the population changes and grows. The task of developers, governing agencies, designers and builders is to determine where best to situate these homes and how to balance these needs with other important criteria that affect the lives of current and future residents. Given that Hawthorn Springs will have an impact on the surrounding community, his role has been to advise the owners on methods to make positive impacts and to mitigate any others while providing affordable building sites with specific amenities to achieve that balance. Other members of the design team have worked to develop an overall site plan for the lots, infrastructure and roadways that work with the property. His role has been to concentrate on the development of individual lots once the subdivision is in place, through the use of covenants and design standards. His continued and most important role will be as part of the Architectural Review Committee to help make sure the vision of the owners is followed and the goals of the project pertaining to individual lot development and design and construction and the use of the homes is actually realized. Jennie outlined certain measures contained in the covenants and design standards intended to control visual and physical impacts such as enclosed storage, limited exterior parking, exterior lighting, grading and drainage, vegetation, building form, materials and finishes. Additionally, the covenants and design standards address such issues as common areas, setbacks, garages and other accessories structures, fences, signs, pet control and other wildlife interface mitigations. They have attempted to identify issues generally encountered and specific to the unique characteristics of this site and to address those issues in a manner beneficial to the community at large in an understandable and enforceable form. The Architectural Review Committee will continue to assist builders and homeowners in clarifying issues specific to their individual projects and implementing the standards approved.

George Sherwood stated he was the owner of Montana Preferred Properties. He presented a packet to the Board with statistics on the Frenchtown Activity Circle and letters of support for this project from several businesses in Frenchtown. He read his letter into the record. *"Missoula County Commissioners: I've lived in Frenchtown, Montana the last 20 years. I was the Postmaster for ten years, served on the Rural Fire District as Board Chairman and three years on the school board. I've enjoyed it and upon retirement started a Real Estate firm, Montana Preferred Properties, located in Frenchtown. Part of the firm is dedicated to work on subdivisions that are an asset to our community and which produces property for Frenchtown graduates to buy and return home. We have a known shortage of property to sell to folks who want to be part of this community. As you can see from my presentation, we are very limited on the availability of ground for subdivisions in the circle. The density is controlled by the amount of sewage you can put into the ground and the covenants that restrict parcels being split. Other restrictions include floodplain, slope, government ownership and landowners who are not willing to split their properties at this time. However, we have come to a no growth situation that is driving prices sky high. This is not a good situation for our community. We need good sustainable growth that protects all of our interests. Therefore, I highly recommend that you support this subdivision."* People look at Frenchtown as a one-horse town. That is not true, it is a very viable community. He is a member of a group that over the past eight years has raised over three-quarters of a million dollars that has been returned to community to help kids, build a stadium and baseball fields. It is a real positive area and they welcome good subdivisions that will continue with that effort in the community and support the schools and businesses.

Fred Deschamps stated that he owned property on both sides of this subdivision. He corrected George in that Frenchtown is a two-horse town and they can both be seen in Homecoming Parade on Saturday. He is very impressed with the subdivision and the people that are proposing it. He is the Frenchtown Weed Coordinator and works to get grants to take care of the weeds. Tom and Kathy participated last year. When other people purchase ground, he can't get them interested. Tom also takes care of his fences which is something the previous owner didn't do.

Scott Johnson stated he was a consulting project manager with Cross Management Engineers. He has been brought on this team to develop budgets, schedules and contracts and generally manage the design and construction process. He has been consistently impressed with Tom and Kathy's commitment to doing the right thing. They have been intimately involved and invested significantly in bringing a team together to help design this subdivision. He believes it will meet the intent of the governing agencies. The process is new to Tom and Kathy, yet they have dealt with it in a manner that has gained them respect from all participants. He has been involved in the negotiations with the Office of Planning and Grants, Fish, Wildlife and Parks, BFI, Rocky Mountain Elk Foundation, Five Valleys Trust and Frenchtown Fire District. He commended Jackie Corday and Bob Anderson for their positive efforts and solutions to mitigate the wildlife issues. These will bring long term benefits to the public. Patchy, Inc. has gone the extra mile to provide a good example of stewardship and conservation in developing this subdivision. The development will impact Frenchtown in a positive manner.

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

Commissioner Curtiss stated that the Planning Board had recommended pull-outs for fire, medical, law enforcement and other emergency vehicles. She asked Scott Waldron of the Frenchtown Fire District if these special pull-outs were needed or if the proposal provided adequate access for emergency vehicles.

Scott Waldron stated the roads were proposed at 24 feet wide with shoulders. That is generally what they deal with in the County and the Fire District made no request for special pull-outs as they have to stop where the problem is, not where a turnout might be located. Those would not be a benefit to the Fire District. The developers have complied with their requests and this will be the best water system in the area by far. They have agreed to put a hydrant on the Frontage Road so the Fire District can use it as a fill station for emergencies in other areas. He felt the road system was adequate.

Commissioner Curtiss asked Jackie what Planning Board's intent was with adding this recommendation.

Jackie Corday stated their intent was to make sure there would be adequate pull outs as this is a long winding road. The bus pull outs and mail box pull outs, which will be separate, should be adequate. Public Works would make a final determination. She felt the additional language recommended by Planning Board was probably not needed.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Section 3-2(6)(C)(i) of the Missoula County Subdivision Regulations to exceed the maximum cul-de-sac length for Bunchgrass Lane, based on the findings of fact in the staff report; approve the variance request from Section 3-2(3)(B) of the Missoula County Subdivision Regulations to vary from the 32 foot street width standard, based on the findings of fact in the staff report; and approve the variance request from Section 3-3(1)(H)(ii) of the Missoula County Subdivision Regulations to allow "through lots," based on the findings of fact in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners delete the language recommended by Planning Board in Condition 6. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners accept the changes recommended by staff, as shown on the memo dated October 1, 2003 from Jackie Corday, to amend Condition 8, delete Condition 9, amend Condition 10 and add new Condition 11. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

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

Chairman Carey thanked Tom and Kathy for a very thoughtful and respectful development. He hoped this would be the standard that others will try to emulate.



Commissioner Evans stated that the comments in the Planning Board minutes from Fred Reed about these people's stewardship of the land and wildlife was very impressive. She admired their commitment.

### **Hawthorn Springs Summary Subdivision Conditions of Approval:**

#### **Roads and Walkways**

1. The first 190 feet of Wilson Lane shall be relocated within the Bunchgrass Lane right-of-way. Plans for the intersection of Wilson Lane and Bunchgrass Lane shall be submitted for review and approval by Public Works, prior to final plat approval. *Subdivision Regulations Article 3-2(1)(J), 3-2(1)(K) and Public Works recommendation.*
2. Walkways along all of the roads within the subdivision and along Frenchtown Frontage Road shall be paved with asphalt. *Subdivision Regulations Article 3-2(8)(iii), Public Works, Health Department, Frenchtown Public Schools and OPG recommendation.*
3. The covenants shall be amended to include a new section under Article II entitled "Pathways to Common Areas" and include the following: The Declarant shall be responsible for constructing a 3 foot wide gravel pathway within the 30 foot wide Public Pedestrian Easements indicated on the Hawthorn Springs plat within two years of final plat filing. The Association shall be responsible for maintaining the pathways and for controlling weeds within the easements. *Subdivision Regulations Article 3-8(8)(D), 3-2(8)(C) and OPG recommendation.*

#### **Fire**

4. Final plans and installation of post hydrants shall be reviewed and approved by the Frenchtown Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-7 and Frenchtown Rural Fire District recommendation.*
5. Section 28.b of the covenants shall be amended to provide for Homeowners Association maintenance of the fire hydrants within the subdivision. *Subdivision Regulations Article 3-7 and OPG recommendation.*

#### **Public Health and Safety**

6. Prior to final plat approval, plans for bus and mailbox pullouts shall be submitted for review and approval by Public Works. *Subdivision Regulations Article 3-2(1)(E) and Frenchtown School District recommendation.*
7. The covenants shall be amended prior to final plat approval as follows: include a new section entitled "Radon Mitigation" that states: "EPA has designated Missoula County as having a high radon potential (Zone 1). All residences should incorporate passive radon mitigation systems into the design." *Subdivision Regulations Article 3-1(1)(D), Health Department and OPG recommendation.*
8. The "Nuisance" section of the covenants shall be entitled "Nuisances, Trash and Garbage" and be amended prior to final plat approval to add the following: Homeowners shall use 95 gallon polyurethane carts from BFI to contain all garbage; no other types of garbage containers are allowed. The carts must be stored inside fully enclosed sheds or garages until the day of garbage pickup. The carts may be placed outside for pickup only between 7:00 a.m. and 7:00 p.m. on the day of BFI pickup. When there are 50 residences in this subdivision, the effectiveness of this garbage plan to deter wildlife will be evaluated by Fish, Wildlife and Parks (FWP) and the Homeowners Association. If FWP recommends a different collection method, including, but not limited to, bear-resistant roll-off dumpsters located at the base of the subdivision (Lot 1 or 2) with appropriate facilities, the Association shall be responsible for implementing such recommendations. The Association shall maintain the common area needed for the dumpsters and set up whatever process is necessary to centralize the billing for the garbage service, infrastructure and related construction costs. *Subdivision Regulations Article 3-1(10), FWP and OPG recommendation.*

#### **Natural Resources**

9. The area of Lots 95, 96 and 97 shall be reconfigured as set forth in the revised plat date 9/30/03. All areas within these three lots that equal or exceed 25% slope shall be designated as "No Build" areas on the final plat. *Subdivision Regulations Article 3-1(5), 3-1(9), 4-1(11)(C)(i), 4-1(12), MCA 76-3-608(3)(a), MCA 76-3-608(4), FWP and OPG recommendation.*
10. Prior to final plat, the applicants shall donate the northern 160 acres in Lot 97 (SW 1/4 of S.32, T15N, R20W) to a qualified conservation organization (either in fee or grant a conservation easement) for the express purpose of protecting and enhancing the acreage for winter elk habitat. The applicant shall consult with Fish, Wildlife and Parks to develop the specific terms of the grant. If a conservation organization will not accept the grant, the 160 acres shall be designated on the final plat as a "No Build" zone. *Subdivision Regulations Article 3-1(5), 3-1(9), 3-1(10), 4-1(11)(C)(i), 4-1(12), MCA 76-3-608(3)(a), MCA 76-3-608(4), FWP and OPG recommendation.*
11. Article VII, Section 2.e of the covenants shall include the following language: The covenants restricting the use of the land for the purpose of protecting wildlife and riparian areas are enforceable by Missoula County. The right to enforce the covenants does not obligate Missoula County to inspect the property and no claim of damages may be made against the County as the result of undetected lack of compliance with wildlife and riparian protection requirements. *Subdivision Regulations Article 3-1(10) and OPG recommendation.*
12. Article VII, Section 2.c of the covenants shall be amended to include nuisance, trash and garbage in the list of covenants that cannot be amended without governing body approval. *Subdivision Regulations Article 3-1(10) and FWP recommendation.*
13. The final plat shall accurately show the Areas of Riparian Resource and an adjacent buffer throughout the eastern and western draws, subject to inspection, review and approval by OPG and Montana Fish, Wildlife and Parks. The riparian areas shall be labeled on the final plat as "Area of Riparian Resource – No Improvement Zone – See covenants for more information." *Subdivision Regulations Article 3-13 and OPG recommendation.*

14. The access restrictions in Section 24 of the covenants shall be stated in the Riparian Management Plan. *Subdivision Regulations Article 3-13 and OPG recommendation.*
15. The last sentence of Section 28.e of the covenants shall become its own subsection entitled "Western Draw/Ravine" and be revised as follows: All Common Area outside the 6 acre Play Area is part of the western draw, which shall be preserved and protected in its natural condition. Passive recreation is allowed, such as a walking path. Motorized vehicles and bicycles are prohibited, except to provide service and maintenance. See Article IV, Area of Riparian Resource, for further information about this area. *Subdivision Regulations Article 3-8(1)(A), 3-13(4)(A), OPG and County Parks recommendation.*
16. Section 28.c of the covenants shall be amended to include the following: The Declarant shall be responsible for noxious weed control on all unsold lots and the Common Area until title to the Common Area is transferred to the Association. Upon transfer of the Common Area to the Association, the Association shall maintain the common areas in compliance with Montana's County Weed Control Act and the Missoula County Noxious Weed Management Plan. Additionally, the Association shall revegetate any ground disturbance on the Common Areas caused by construction or maintenance. *Subdivision Regulations Article 3-1, 3-2(8)(J) and Weed District recommendation.*
17. A Revegetation Plan for disturbed sites shall be submitted to and approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*

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

**THURSDAY, OCTOBER 2, 2003**

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

Claims List – The Commissioners signed the Claims List, dated October 2, 2003, with a grand total of \$373.09. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated October 2, 2003, with the following grand totals:

- 1) \$120.00; and
- 2) \$172,613.50.

The Claims Lists were returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Contract – The Commissioners signed a Professional Services Contract between the Partnership Health Center ("PHC") and the University of Montana Psychology Department for the placement of students at PHC for the purpose of conducting a mental health intake with patients requesting this service, minimum counseling and referral out to a community therapist. The total amount shall not exceed \$8,400. The term will be September 5, 2003 through June 30, 2004. The document was returned to Terry Delgadillo at PHC for further signatures and handling.

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

**FRIDAY, OCTOBER 3, 2003**

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 Carey was out all afternoon.

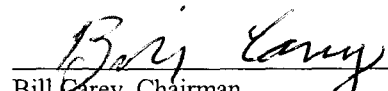
Claims Lists – Commissioners Carey and Curtiss signed two (2) Claims Lists, dated October 2, 2003, with the following grand totals:

- 1) \$64,262.98; and
- 2) \$8,206.94.

The Claims Lists were returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated October 3, 2003, with a grand total of \$18,594.29. The Claims List was returned to the Accounting Department.

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

**MONDAY, OCTOBER 6, 2003**

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

Claims List – The Commissioners signed the Claims List, dated October 2, 2003, with a grand total of \$49,379.10. The Claims List was returned to the Accounting Department.

Monthly Report – Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending September 30, 2003.



Monthly Report – Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Shirley E. Faust, for the month ending September 30, 2003.

**TUESDAY, OCTOBER 7, 2003**

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 Lists – The Commissioners signed three (3) Claims Lists, dated October 6, 2003, with the following grand totals:

- 1) \$13,050.00;
- 2) \$40,013.14; and
- 3) \$70,934.86.

The Claims Lists were returned to the Accounting Department.

Claims Lists – The Commissioners signed five (5) Claims Lists, dated October 7, 2003, with the following grand totals:

- 1) \$38,888.55;
- 2) \$41,752.50;
- 3) \$498.39;
- 4) \$765,904.15; and
- 5) \$25,426.98.

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 – Per recommendation of the Missoula Development Authority, the Commissioners signed a letter, dated October 7, 2003, to the County Board of Adjustment, supporting four variances requested by the Harley Davidson Motor Company for their new facility on Lots 8 & 9, Block 9, Missoula Development Park (Phase 2). The variances relate to signage, parking/driveway setbacks, and overhead doors.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-006 for the Health Department, as an object code was needed for an amount totaling \$200.00.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-009 for the Partnership Health Center in the amount of \$2,000, in order to establish expenditure for telephone costs.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-010 for the Partnership Health Center in the amount of \$2,000, in order to establish a telephone expenditure line for Ryan White II Project Code.

Resolution No. 2003-108 – The Commissioners signed Resolution No. 2003-108, dated October 7, 2003, fixing tax levies for Missoula County for fiscal year 2003-2004. The Resolution follows (in full):

**RESOLUTION NO. 2003-108  
FIXING TAX LEVIES FOR MISSOULA COUNTY  
FOR FISCAL YEAR 2003-2004**

WHEREAS, the Board of County Commissioners of Missoula County, Montana, has approved and adopted the budget for Fiscal Year 2003-2004, as required by law; and

WHEREAS, budgets have been received from various taxing entities; and

WHEREAS, the value of a mill has been determined as \$155,527 County-wide, and a value of \$78,235 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 2003-2004 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	36.74	A, B and C
Poor Fund	4.58	
Bridge Fund	4.26	
Weed Fund	2.11	
Child Daycare	0.29	
Fair Fund	0.31	
District Court Fund	3.89	
Park Fund	1.06	
Library	9.29	
Planning & Grants	2.94	
Aging Fund	1.16	
Extension Fund	1.52	
Mental Health Fund	0.50	

Public Safety	37.27
Permissive Medical Levy	1.69
Museum Fund	2.66
Judgment Levy	0.81
Technology Fund	2.29
Risk Management	2.35

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SUB-TOTAL 115.72

MISSOULA COUNTY-WIDE DEBT SERVICE

Jail Bond	6.50
Risk Management Bond	0.62

SUB-TOTAL 7.12

TOTAL COUNTY-WIDE & DEBT SERVICE LEVIES 122.84

Road Fund	16.26
Health Fund	7.33
Animal Control	0.98
Permissive Medical Levy (County Only)	0.76

TOTAL COUNTY-ONLY LEVY 25.33

CITY OF MISSOULA 176.32 D

MISSOULA COUNTY SCHOOLS VARIOUS E

STATE OF MONTANA  
UNIVERSITY MILLAGE FUND 6.00 F  
STATE SCHOOL FOUNDATION 40.00

SPECIAL FIRE DISTRICTS	
CLINTON RURAL	25.24
MISSOULA RURAL	77.37
ARLEE/JOCKO VALLEY RURAL	15.75
FLORENCE-CARLTON RURAL	19.50
EAST MISSOULA RURAL	14.63
FRENCHTOWN RURAL	37.56
SEELEY LAKE	28.89

OTHER SPECIAL DISTRICT LEVIES	
SOIL CONSERVATION	1.41
SOS HEALTH CENTER	3.08
CARLTON CEMETERY	1.62
MISSOULA URBAN TRANSIT	11.93
SEELEY LAKE CEMETERY	4.31
ELK MEADOWS WATER DISTRICT	65.00
FLORENCE-CARLTON PARK	2.01

SPECIAL ASSESSMENT DISTRICTS		G
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 FIRE	VARIOUS (SEE ATTACHMENT)	
SWAN VALLEY FIRE	VARIOUS (SEE ATTACHMENT)	
EAST MISSOULA SEWER		

SPECIAL IMPROVEMENT DISTRICTS	VARIOUS (SEE ATTACHMENT)	G, H
WATER QUALITY DISTRICT	VARIOUS (SEE ATTACHMENT)	G
TAX INCENTIVES	VARIOUS (SEE ATTACHMENT)	G

DATED THIS 7TH DAY OF NOVEMBER, 2003.

APPROVED AS TO FORM & CONTENT:  
s/ Michael W. Sehestedt

ATTEST:  
s/ Vickie M. Zeier, Clerk and Recorder

BOARD OF COUNTY COMMISSIONERS  
s/ Bill Carey, Chairman  
s/ Jean Curtiss, Commissioner  
s/ Barbara Evans, Commissioner

Agreement – The Commissioners signed a Memorandum of Agreement between Missoula County and Opportunity Resources, Inc. for the provision of transportation services on Sundays for seniors and individuals with disabilities. The total amount shall not exceed \$6,250.00. The term will be July 1, 2003 through June 30, 2004. All other terms and conditions are set forth therein.

Request for Action – The Commissioners approved and awarded the bid (base bid amount of \$272,000) to Structural Systems ("SS") for the Ice Rink Renovation Project at the Missoula County Fairgrounds. SS will immediately proceed to work on the sprinkler piping and insulation of the rink ceiling (estimated cost not to exceed \$135,314). The remainder of the bid is contingent upon BCC ratification after a public hearing related to issuance of a \$900,000 Missoula County General Fund bond, which is expected to be held on October 22, 2003. Revenues from ice rental to the Missoula Area Youth Hockey Association are expected to service the debt.

Signature Page – The Commissioners reviewed and signed one (1) Claims Signature Page for the Larchmont Golf Course Accounts Payable Invoice Register dated October 3, 2003, in the amount of \$13,046.69. The Signature Page was returned to the County Auditor.

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

Tax Abatement Requests – At the Clerk & Recorder's Departmental Meeting with Vickie Zeier, held on October 7, 2003, the Commissioners approved requests and/or letters regarding the following:

- 1) To approve a request from Stewart Gifford, Seeley Lake, Montana, to refund penalty and interest paid on mobile home for Taxpayer ID #90416250;
- 2) To approve a request from Wade Rise to apply 80% tax assistance for his 2003 mobile home tax bill for Taxpayer ID #90145550; and
- 3) To deny a request from Charles W. & Suzan Olinger to refund taxes paid for a 1994 Dodge Dakota.

**WEDNESDAY, OCTOBER 8, 2003**

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, 2003, with a grand total of \$3,195.50. The Claims List was returned to the Accounting Department.

Monthly Report – Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending September 30, 2003.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 20 - Pay Date: October 3, 2003. Total Missoula County Payroll: \$896,565.30. The Transmittal Sheet was returned to the Auditor's Office.

**CHIEF ADMINISTRATIVE OFFICER MEETING**

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

Contract – Chairman Carey signed a Montana Department of Commerce Community Development Block Grant (CDBG) #MT-CDBG-03PG-09 (Missoula County/Seeley Lake Sewer Planning Grant), for the conduction of an income survey and community needs assessment for Seeley Lake, and for the preparation of grant applications for a Seeley Lake wastewater project. The total amount shall not exceed \$7,750.00. All other terms and conditions are set forth therein. The document was returned to Beth Berlin in the Office of Planning and Grants for further handling.

Resolution No. 2003-109 – The Commissioners signed Resolution No. 2003-109, dated October 8, 2003, a Resolution to abandon a portion of the road shown in Road Plat Book 1, Page 46, Sheet 116, records of Missoula County, State of Montana, situate in Section 2, T 12 N, R 20 W, PMM, bounded on the south by the southerly line of Tract 12 A-2 as shown in Wornath Orchard Tracts Subdivision, Tracts 12 A-1 and 12 A-2, and bounded on the north by the southwesterly right-of-way line of Blue Mountain Road. The right-of-way is no longer needed.

Other items included:

- 1) The Commissioners voted to approve and proceed with a DNRC/Office of Planning and Grants Fire Grant.

**PUBLIC MEETING – October 8, 2003**

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

**Pledge of Allegiance**

**Public Comment**

None

Routine Administrative Actions

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Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$1,313,213.97. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Proclamation: Domestic Violence Awareness Month

Commissioner Curtiss read the Proclamation into the record.

**WHEREAS**, the impact of domestic violence is wide ranging, directly affecting women, children and society as a whole; and

**WHEREAS**, the problems of family violence are not confined to any group or groups of people, but cross all social and economic barriers; and the problems of family violence are supported by societal indifference; and

**WHEREAS**, the crimes of partner assault and family member assault violate an individual's privacy, dignity, security and humanity, due to the systemic use of physical, emotional, sexual, psychological and economic control and abuse; and

**WHEREAS**, Domestic Violence Awareness Month, in October 2003, is a time for renewed commitment to building a non-violent community; and

**WHEREAS**, Missoula community members can get involved in reducing domestic violence in our community by:

- Attending meetings of the Missoula Family Violence Council, which meets at noon on the first Wednesday of every month in the City Council Conference Room in City Hall;
- Making a commitment to become educated on the topic by attending community events and forums;
- Holding offenders accountable for their behavior in various ways;
- Condemning violence in all forms, including refraining from using violent language; and
- Modeling non-violent relationships for children; and reinforcing messages that violence is not okay.

**NOW, THEREFORE, WE**, the Mayor of the City of Missoula and the Board of County Commissioners of Missoula County, do hereby jointly proclaim October, 2003, as

**DOMESTIC VIOLENCE AWARENESS MONTH**

and urge all citizens to actively participate in the scheduled activities and programs sponsored by the Missoula Family Violence Council, the Crime Victim Advocate Program and the YWCA to work toward the elimination of violence against women and children.

Signed by Missoula Mayor Mike Kadas and Missoula County Commissioners Bill Carey, Jean Curtiss and Barbara Evans.

Hearing: Local Law Enforcement Block Grant

Chairman Carey: Next we have a hearing on the Law Enforcement Block Grant. I'll open that hearing and ask for someone to tell us about that.

Undersheriff Mike Dominick: The Law Enforcement Block Grant is a continuing grant we get every year. Unfortunately, this year, it was cut by \$32,000. Last year it was \$62,000. This year it's down to \$30,000, that's the 40% we receive, we split it with the City. What we are looking at funding this year is continuing to fund \$14,655 for a half-time evidence clerk/property clerk upstairs; as well as \$16,000 for overtime due to the fire season. If we don't use that, it would go into the training budget. That's the total of the grant this year.

Chairman Carey: Alright. Thank you Mike. This is a hearing. Is there anybody here to ask questions or comment about this particular matter. Seeing none, I'll close the hearing. Do the Commissioners have any questions.

Mike Sehestedt: I'd note for the record that they convened an Advisory Committee meeting of citizens and public officials. That Advisory Committee unanimously supports this recommendation.

Chairman Carey: Thank you Michael.

Commissioner Curtiss: Do we need to take any action on how to accept this grant?

Chairman Carey: I think we can approve it here.

Commissioner Curtiss: I would move that we approve the Law Enforcement Block Grant as proposed by the Sheriff's Department with input from the Citizen Committee.

Commissioner Evans: Second.

Chairman Carey: All if favor say Aye.

Commissioner Evans: Aye.

Commissioner Curtiss: Aye.

Chairman Carey: Aye. Thank you very much.

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The motion carried on a vote of 3-0.

**Decision: Halling Farms Rezoning – Mullan Road, west of Reserve Street – POSTPONED TO OCTOBER 15, 2003**

Chairman Carey announced that the hearing on the Halling Farms Rezoning on Mullan Road, west of Reserve Street, had been postponed to October 15, 2003.

**Consideration: Belker Lots (4 lots on 5.11 acres) – northeast of Frenchtown Interchange**

Tim Worley, Office of Planning and Grants, presented the staff report.

This is a proposal by Eric and Virginia Belker, represented by Ron Ewart of Eli & Associates, to divide a 5.11 acre parcel into four lots; three of the proposed lots are approximately 1 acre in size and the fourth lot is 2.11 acres in size. The property is located on an unnamed road north of Frenchtown Frontage Road. It is south of the Frenchtown Irrigation Canal and outside the Urban Growth Area. The property is essential level and adjacent to the Frenchtown Irrigation Canal. The plat shows a 20 foot utility easement so that all lots have access to the canal in accordance with State law.

The property is unzoned. The Comprehensive Plan recommends a density of one dwelling unit per 10 acres. The property is also within the Frenchtown Activity Circle which has a recommended density of up to 2 dwelling units per acre. This proposal complies with the Comprehensive Plan land use designation and goals.

The subdivision is accessed by an unnamed road with Frenchtown Frontage Road addresses. Lots 1, 2 and 3 have access off the unnamed road and Lot 4 has access by a 14 foot gravel drive within a 30 foot private road and utility easement. The unnamed gravel road is 24 feet wide within a 60 foot private road and utility easement. This is defined as an off-site road. The length to the nearest publicly-maintained paved road is 765 feet and this road is not specifically and uniquely attributable to the subdivision. In addition, it is a private road with only one-half of the easement actually on the subject property. As a result, paving is not required under the off-site road section of the Subdivision Regulations. Public Works and the Health Department both recommended paving in this instance, but staff could not recommend paving per the Subdivision Regulations.

There is one variance request from providing pedestrian connections as required under Article 3-2(8)(A)(iv). Staff recommends approval of the variance request. The applicant proposes walkway installation following development of the properties. This requirement has been made a part of the covenants.

Staff recommends approval of the subdivision subject to four conditions: 1) approved turnarounds for driveways in excess of 150 feet in length; 2) installation of residential sprinklers or a 350 gpm water source; 3) advising property owners of the Health Department recommendation that new construction incorporate passive radon mitigation systems; and 4) amending Article II, Section 2 of the covenants so that sections regarding fire protection, weeds, radon, addressing and walkways can be changed only with governing body approval.

Chairman Carey asked for public comments.

Ron Ewart, Eli & Associates, Inc., developer's representative, thanked Tim for his work on this proposal. They are in agreement with the recommended conditions of approval. The property owners are present today if the Board has any questions for them. Mr. and Mrs. Belker own a small health club/fitness studio in Frenchtown and they wanted to find a piece of property to build a new facility. They found this piece of land but it is quite a bit larger than what they needed. In order to be able to afford this, they wanted to divide the property. This lot is located in the Mill Creek Ranches, a large Certificate of Survey done quite awhile ago. The covenants of the Mill Creek Ranches allow commercial use on the western 200 feet of this piece of property and the property to the south. Lot 4 contains a home that will remain with a large field behind it where the drainfields replacement areas will be located for the other three lots. They want to situate their new fitness facility on one of the lots and sell the others. The covenants are quite restrictive, they could allow some light commercial use or a single family home. The road is currently unnamed, but they plan to come up with an appropriate road name and have it approved. There is a road to the south that serves the existing home and it will also be named. The unnamed road is in good shape. There are about 11 owners that use that road and they are trying to form an RSID to bring the road to County standards and have it paved.

There were no further comments.

Commissioner Curtiss stated that she had a concern about unnamed roads, especially for emergency services.

Greg Robertson stated that as part of Enhanced 9-1-1, they are trying to get many of the unnamed roads assigned names. They are actively contacting landowners currently to get that accomplished. In this case, there are plans to name the road and have addresses properly assigned.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(8)(A)(iv) of the Missoula County Subdivision Regulations requiring internal pedestrian connections, based on the findings of fact in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the Belker Lots Subdivision, based on the findings of fact and subject to the conditions in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Belker Lots Summary Subdivision Conditions of Approval:**

**Driveways**

1. The covenants shall be amended to require that driveways in excess of 150 feet in length shall have approved turnarounds for fire apparatus within 150 feet of the building and shall have an unobstructed width not less than 20 feet and an unobstructed vertical clearance of 13 feet, 6 inches, with final designs to be approved by the Frenchtown

Rural Fire District. *Subdivision Regulations Article 3-2(10)(E), Frenchtown Rural Fire District and OPG recommendation.*

**Fire**

2. The covenants shall be amended to include the following language: "Prior to occupying the residences or commercial structures constructed on the lots within the Belker Lots Subdivision, the purchasers of lots shall: 1) install residential/commercial fire sprinkling systems in the structures; or 2) provide a 350 gallons per minute water source for fire protection to be reviewed and approved by the Frenchtown Rural Fire District." *Subdivision Regulations Article 3-7(1) and Frenchtown Rural Fire District recommendation.*

**Covenants**

3. The covenants shall include a provision advising property owners of the Health Department recommendation that all new construction incorporate passive radon mitigation systems. The language of the provision shall be subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-1(2) and City-County Health Department recommendation.*
4. Article II, Section 2, of the covenants shall be revised to state that sections regarding fire protection, weeds, radon, addressing and walkways shall not be amended or deleted without governing body approval. *Weed District and OPG recommendation.*

**Consideration: Bissell Estates (5 lots on 5 acres) – Schwartz Creek Road in Clinton**

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

Deborah and Kendall Bissell, represented by Becky Weaver of Professional Consultants, Inc., are requesting approval to subdivide a 5 acre parcel into 5 one acre lots. The property is unzoned. Staff is recommending approval subject to conditions.

The 1975 Missoula County Comprehensive Plan designates the property as Suburban Residential with a maximum density of two dwelling units per acre. The parcel is located within the Clinton Activity Circle.

Proposed Lots 3, 4 and 5, the three lots to the west, are accessed from Schwartz Creek Road, a 24 foot wide paved, County maintained road within a 60 foot right-of-way, which meets the applicable County road standards. Proposed Lots 1 and 2, the two lots to the east, will be accessed from Hawk Lane, an unpaved 24 foot wide road within a 60 foot wide private access easement. The applicant is requesting a variance from County Subdivision Regulations Article 3-2(1)(G) requiring paving of Hawk Lane. Public Works supports the variance request and staff is recommending approval. The applicant has submitted a road maintenance agreement for Hawk Lane (Book 439, Page 1935) with the subdivision application.

Subdivision Regulations require that all subdivisions outside the Urban Growth Area provide non-motorized facilities. The applicant is not proposing pedestrian facilities with this subdivision and is requesting a variance from this requirement. The applicant has placed a note on the preliminary plat waiving the right to protest an RSID/SID for future improvements to Schwartz Creek Road. Public Works and staff are in support of this variance request.

Each lot is proposed to be served by individual wells and individual septic systems. Subdivision Regulations and State law exempt minor subdivisions from the provision of parkland dedication. Therefore, parkland dedication not required for this subdivision.

Mark Latrielle, Clinton Elementary School District 32 Superintendent, commented that there might be an impact based upon increased enrollment. He requested that the applicants consider a voluntary impact payment to the Clinton School District.

The Clinton Rural Fire District did not provide comments pertaining to fire protection. Staff is recommending a condition that the developer coordinate with the Clinton Rural Fire District for an acceptable fire protection plan prior to final plat approval.

Staff is recommending a condition that the covenants be amended modifying the language addressing weed management, per Bill Otten's recommendation.

Jeff Schalow, Floodplain Administrator, recommended that the covenants be amended to state that all new construction shall have a lowest floor elevation, including basements, two feet above the 100 year flood elevation and that crawlspace floors may be at or above the 100 year flood elevation if they do not contain mechanicals. The area on the west side of the proposed subdivision, which places significant constraints on Lot 5, would be affected by this amendment to the covenants.

Chairman Carey asked for public comments.

Becky Weaver, PCI, developer's representative, thanked Dale for his work on this project. They are in agreement with the conditions as stated.

Commissioner Evans asked if the voluntary contribution to the Clinton School District had been discussed with the applicant.

Becky Weaver stated the applicant will provide a voluntary contribution to the school. They are currently negotiating with the School District as to the exact amount of the contribution.

Commissioner Evans stated for the record that is not a legal requirement.

There were no further public comments.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Article 3-2(8)(A)(iii) and (iv) of the Missoula County Subdivision Regulations to not require a walkway system in the subdivision, based on the findings of fact set forth in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Article 3-2(14)(D) of the Missoula County Subdivision Regulations to not pave Hawk Lane, 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 Curtiss moved that the Board of County Commissioners approve the Bissell Estates Summary Subdivision, based on the findings of fact and subject to the conditions contained in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

#### **Bissell Estates Summary Subdivision Conditions of Approval:**

##### **Fire Protection**

1. The Clinton Rural Fire District shall review and approve the design of the fire protection system or any alternate water supply system, prior to final plat approval. *Subdivision Regulations Article 3-7 and OPG recommendation.*

##### **Covenants**

2. The covenants shall be amended prior to final plat approval, subject to review and approval by OPG, stating: "All new construction shall have a lowest floor elevation, including basements, two feet above the 100 year flood elevation. Crawlspace floors may be at or above the 100 year flood elevation if they do not contain mechanicals." *Subdivision Regulations Article 3-1(1)(B), 4-1(12) and Floodplain Administrator recommendation.*
3. Section B of the covenants shall be amended to include the following statement: "Lot owners are required to maintain their lot in compliance with the Montana County Weed Control Act and the Missoula County Noxious Weed Management Plan. Lot owners shall revegetate with beneficial species any ground disturbance caused by construction or maintenance at the first appropriate opportunity after construction or maintenance is completed." *Subdivision Regulations Article 3-1(1)(B) and County Weed District recommendation.*

##### **Other Business**

John Hoppe stated he had lived in the City of Missoula for over 45 years and now lives outside the City. He and his first wife (before she passed away) started the Farmers Market. He has seen it grown from only 7 or 8 vendors to over 160 today. After his wife passed away and he had been a widower for four years, he met another lady who later became his second wife. She lives outside the City on Running Deer Lane, which is out past Jim and Mary's RV Park. Inderland Road is the turn from Highway 93 to get to Running Deer Lane. He has been married now for 5 years and continues to use Inderland Road. He suggested that if anyone is purchasing a new or used vehicle and want to see if the suspension is good or if it has any rattles, take a drive on Inderland Road. The road is in terrible shape, it's very washboard and has many chuck holes. Public school buses use this road to pick up children. He has seen the traffic increase on this road over the past few years. Just the other night, he saw more than 12 vehicles using the road in an short period of time. He was wondering if the new material that Commissioner Curtiss spoke to him about had ever been tested.

Greg Robertson stated that a test application of the material, called Permazyme, will be done in about two weeks, on Deschamps Lane.

John Hoppe asked how much traffic uses Deschamps Lane.

Greg Robertson stated that approximately 800 to 1,000 vehicles use that road per day. The application of Permazyme was delayed due to the active fire season. He has four one-mile segments of road picked out to do testing on: Deschamps Lane, Rollercoaster Road, Ninemile Road and Woodworth Road in Seeley Lake. All of these have very heavy truck traffic with varying soil conditions which will provide a good test of how this material performs.

Commissioner Evans asked Greg if there were any plans for Inderland Road.

Greg Robertson stated there were currently no plans for Inderland Road.

John Hoppe stated the washboard is quite bad and the road is also full of chuck holes. He hoped the County would give people who use this road a break. If this new material works, please remember the folks on Inderland Road.

Greg Robertson stated it would take a good year to see if the material holds up through the varying weather conditions. Permazyme costs approximately \$4,700 per mile compared to asphalt, which runs approximately \$200,000 a mile.

There being no further business to come before the Board, the Commissioners were in recess at 2:05 p.m.

**THURSDAY, OCTOBER 9, 2003**

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 October 8, 2003, with a grand total of \$19,601.07. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Kelley Kirschten as Principal for Missoula County Public Schools Warrant #106293, issued January 25, 2002 on the MCPS Payroll Fund in the amount of \$385.27 (for wages), which cannot be found.



Indemnity Bond – Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Bill N. Fisher, Turah, Montana, as Principal for Missoula County Public Schools Warrant #110218, issued April 19, 2002 on the MCPS Payroll Fund in the amount of \$294.37 (for wages), which cannot be found.

Indemnity Bond – Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Judith D. Johnson as Principal for Missoula County Public Schools Warrant #100173, issued September 14, 2001 on the MCPS Payroll Fund in the amount of \$97.22 (for wages), which cannot be found.

Indemnity Bond – Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Connie Croonenberghs as Principal for Missoula County Public Schools Warrant #101438, issued October 17, 2001 on the MCPS Payroll Fund in the amount of \$120.96 (for wages), which cannot be found.

Indemnity Bond – Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Diane Enger as Principal for Missoula County Public Schools Warrant #113465, issued June 21, 2002 on the MCPS Payroll Fund in the amount of \$51.38 (for wages), which cannot be found.

Monthly Report – Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Michael McMeekin, for the month ending September 30, 2003.

#### ADMINISTRATIVE MEETING

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

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Cathy Joy, LPC, for consulting services with the Crime Victim Advocate Program to facilitate stress debriefing and case processing with the CVA team; for the provision of in-service training on various topics such as crisis counseling; and provision of clinical supervision of domestic violence support groups in Seeley Lake. The total compensation shall not exceed \$11,800.00. The term will be September 1, 2003 through June 30, 2005.

Agreements – The Commissioners signed three (3) Memorandums of Agreement between Missoula County and Missoula Correctional Services, Inc. for the following:

- 1) Agreement for the continuation of the Misdemeanor Supervision Program, in the amount of \$173,927.45;
- 2) Agreement for the provision of the Pretrial Supervision Program, in the amount of \$42,249.30; and
- 3) Agreement for the continuation of the Community Service Program, in the amount of \$92,690.43.

The term for all three agreements will be July 1, 2003 through June 30, 2004. All other terms and conditions are set forth therein.

Resolution No. 2003-110 – The Commissioners signed Resolution No. 2003-110, dated October 9, 2003, a Resolution relating to General Fund Obligation Bonds (Missoula Area Youth Hockey Association Project at the Fairgrounds) of the County in an approximate aggregate principal amount not to exceed \$950,000; calling a public hearing thereon, and establishing compliance with Reimbursement Bond Regulations under the Internal Revenue Code. Clerk and Recorder Vickie Zeier signed a Notice of Public Hearing on Incurring Debt for Ice Rink Improvements (which is set for Wednesday, October 29, 2003 at 1:30 pm in the Missoula County Courthouse.) Ms. Zeier also signed a Certificate as to Resolution and Adopting Vote.

Contracts – The Commissioners signed two (2) Professional Services Contracts between Missoula County and Horizon Tree Service for the following:

- 1) Contract to remove bug infested trees in lower Ravenwood County Park, in the general area behind the address of 5890 Kerr Drive, in the amount of \$1,200.00; and
- 2) Contract to complete the fuel mitigation project at Mockingbird County Park (located on Mockingbird Lane off of Upper Miller Creek Road), in the amount of \$775.00.

The term for both contracts will be October 13, 2003 through October 16, 2004. All other terms and conditions are set forth therein.

Request for Action – Chairman Carey signed a Grant Award and Special Conditions Page for the Office of Planning and Grants ("OPG"). The County will receive \$100,000; approximately one-half will support the work of the Missoula Forum for Children and Youth, which is pivotal to reducing youth substance abuse in Missoula. The remainder will pay for the All Stars Program in all four middle schools and fund Flagship activities at those schools. Match for the grant is both in-kind and in hard dollars and comes from a variety of sources including Turning Point, Missoula County Public Schools, University of Montana, and OPG. The documents were returned to Peggy Seel in OPG for further handling.

Letter and Memo – Commissioner Curtiss signed a letter to Dwayne and Ann Rehbein, Missoula, enclosing a Memorandum to Jim Carlson, Missoula City/County Health Department signed by the Commissioners (both dated October 9, 2003), regarding the installation of a septic system on Parcel 2 in Grantland at the Glen Eagle Subdivision. Based on Deputy County Attorney Mike Sehestedt's legal opinion regarding this issue, the Health Department may consider a request for a septic permit on lots in Glen Eagle sold to Third Parties without reference to the contract with Ken Knie.

Request for Action – Chairman Carey signed a CTEP Project Specific Agreement (STPE #8199(65)) between Missoula County and the State of Montana for the reconstruction and maintenance of the Van Buren Street Pedestrian Bridge. The estimated cost of the project's development and construction totals \$458,7901 the various agency

breakdown costs are set forth therein. The project is planned to be constructed during the summer of 2004. The document was returned to Greg Robertson, Public Works Director, for further signatures and handling.

Other items included:

- 1) The Commissioners received an update on the Fourth Floor Annex Project and the various Facilities Maintenance projects, including boiler replacement, Courthouse repair, PHC Pharmacy remodel, Pt. 118 improvements, and Human Resources remodel.
- 2) The Commissioners discussed a proposal to use approximately \$12,000 of the ARCO money for asphalt to be milled and having the College of Technology Heavy Equipment students surface the existing Kim Williams trail. The BCC concurred that the ARCO money was designated to extend the Kim Williams Trail, and not for resurfacing purposes.


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

**FRIDAY, OCTOBER 10, 2003**

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

Signature Page – The Commissioners reviewed and signed one (1) Claims Signature Page for the Larchmont Golf Course Accounts Payable Invoice Register dated October 8, 2003, in the amount of \$22,913.61. The Signature Page was returned to the County Auditor.

Board Appointments – The Commissioners approved and signed two (2) letters, dated October 20, 2003, to 1) Kristine N. Giffin, Lolo, Montana, and 2) Raymond J. DiPasquale, Missoula, Montana, appointing them as members of the Lolo Community Council. Their terms will commence immediately and run until the School Election is held in May of 2005 (for Mr. DiPasquale) and May of 2006 (for Ms. Giffin).

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

**MONDAY, OCTOBER 13, 2003**

THE COURTHOUSE WAS CLOSED FOR THE COLUMBUS DAY OBSERVED HOLIDAY.

**TUESDAY, OCTOBER 14, 2003**

The Board of County Commissioners did not meet in regular session. Commissioner Evans attended an Internet Seminar held at Ruby's Reserve Street Inn during the day; Commissioner Carey was out of the office all day.

**WEDNESDAY, OCTOBER 15, 2003**

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

Claims List – The Commissioners signed the Claims List, dated October 8, 2003, with a grand total of \$10,541.74. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated October 10, 2003, with the following grand totals:

- 1) \$72,914.12; and
- 2) \$61,613.30.

The Claims Lists were returned to the Accounting Department.

Claims Lists – The Commissioners signed three (3) Claims Lists, dated October 14, 2003, with the following grand totals:

- 1) \$5,883.73;
- 2) \$13,157.77; and
- 3) \$76,798.83.

The Claims Lists were returned to the Accounting Department.

Plat and Agreements – The Commissioners signed the Plat, Subdivision Improvements Agreement and Guarantee, and Development Covenant for Valley Estates, Lot 4, located in the NW¼ of Section 14, T 13 N, R 20 W, PMM, Missoula County, a gross and net area of 2.27 acres, with the owner of record being Richard N. Evans. The Improvements Agreement relates to an asphalt walkway and a dry-lay sewer line; said improvements shall be completed no later than August 27, 2005. The estimated costs are \$8,750, and have been guaranteed by a Letter of Credit from First Interstate Bank. The Development Covenant relates to address signs, weed control, and radon mitigation systems, as set forth therein.

Plat and Agreements – The Commissioners signed the Plat, Subdivision Improvements Agreement and Guarantee, and Development Covenant for Valley Estates, Lot 1, located in the SW¼ of Section 14, T 13 N, R 20 W, PMM, Missoula County, a gross and net area of 2.49 acres, with the owners of record being Raymond L. and Cathy L. Tripp. The Improvements Agreement relates to an asphalt walkway and a dry-lay sewer line; said improvements shall be completed no later than September 10, 2004. The estimated costs are \$8,750, and have been guaranteed by a Letter of

Credit from First Security Bank. The Development Covenant relates to address signs, weed control, and radon mitigation systems, as set forth therein.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

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

Agreement – The Commissioners signed a Memorandum of Agreement between Missoula County and the Missoula Urban Transportation District (“MUTD”) for the provision of additional ADA paratransit service, and for the provision of software and/or internet service to coordinate providing these rides. The total amount shall not exceed \$18,750.00. The term will be July 1, 2003 through June 30, 2004. All other terms and conditions are set forth therein.

Subordination of Mortgage – Chairman Carey signed a Subordination of Mortgage with Missoula County, dated October 15, 2003 relating to property described as Lot 25 in Block 1 of Rehder Homesites, owned by Beverly Suzanne Reynolds (as part of the HOME Program). A \$123,500 loan from Wells Fargo Home Mortgage has been secured by a Deed of Trust. All other terms and conditions are set forth therein. The document was returned to Jenifer Blumberg in the Office of Planning and Grants for further handling.

Subordination Agreement – The Commissioners signed a Subordination Agreement, dated October 15, 2003, relating to property owned by Mark Virts (who is refinancing his property). Missoula County is Beneficiary to a Sanitary Sewer Grant Program Agreement for Full Assistance to Owner-Occupied Household Secured by Real Property (dated April 14, 2003) with Mr. Virts. Missoula County subordinates the lien of said Agreement to the lien of Trust Indenture wherein Chase Manhattan Mortgage Corp. is Beneficiary, Mr. Virts is Grantor, and American Title Escrow is Trustee. The document was returned to Jean Harte in the Office of Planning and Grants for further handling.

Extension Request – Per recommendation of the Office of Planning and Grants staff, the Commissioners approved and signed a letter, dated October 15, 2003 to Tim Wolfe, Territorial Engineering and Surveying, Inc., approving his request for a 180-day extension of the final plat approval deadline for Porter Addition Subdivision. The new deadline will be April 9, 2004.

Extension Request – Per recommendation of the Office of Planning and Grants staff, the Commissioners approved and signed a letter, dated October 15, 2003 to Tim Wolfe, Territorial Engineering and Surveying, Inc., approving his request for an extension of the final plat approval deadline for Valley Homes Mobile Home Court No. 2 Subdivision. The new deadline will be January 1, 2004.

Other items included:

- 1) The Commissioners reviewed and voted to adopt the findings and recommendations in the Department of Public Works' engineering speed study investigation for Big Flat Road.
- 2) The Commissioners discussed and approved three bridge applications as priority undertakings for TSEP projects for FY '04.
- 3) The Commissioners directed Public Works Director Greg Robertson to proceed with public hearings on three separate RSIDs concerning Meadows West.

#### PUBLIC MEETING – October 15, 2003

The Public Meeting was called to order at 1:30 p.m. by Chairman Bill Carey. Also present were Commissioner Jean Curtiss, Commissioner Barbara Evans, Deputy County Attorney Colleen Dowdall, Deputy County Attorney Marnie McClain, County Clerk and Recorder/Treasurer Vickie Zeier and County Public Works Director Greg Robertson.

#### Pledge of Allegiance

#### Public Comment

None

#### Routine Administrative Actions

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$284,164.87. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

#### Bid Award (Elections): Election Tabulation System

Vickie Zeier presented the staff report.

This is a request to award a bid for the Election Tabulation System. Bids were opened on September 15, 2003 with the following results: Election Systems and Software in the amount of \$590,710. Election Systems and Software provides the system currently used.

The current election tabulating equipment is 20+ years old and needs to be replaced. There is also a new Federal law called Help America Vote Act (HAVA) which requires the elector to be able to correct their ballot if they make an over-vote, voting for more than one candidate in any given race. The equipment that would work best are called Precinct Counters, which will take the place of the ballot box. The elector will place their ballot in the counter and it will read what has been marked and tell the elector if they have made a mistake. If a mistake is noted, the elector is given the choice of sending the ballot back through with the mistake or ask for the ballot back to correct the mistake.

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The bid for the entire system breaks down as follows:

	Price Per Unit	Extended Price
1. Model 100 (includes steel ballot box, diverter, modem, carrying bag) – 88 units	\$4,920	\$432,960
2. Model M650 (includes ballot box, cart/table, start-up kit, dust cover, ballot box) – 1 unit	\$40,000	\$40,000
3. Unity Software * Unity Data Manager * Unity Data Acquisition Manager * Unity Reporting Manager	\$23,000	\$23,000
	Included	Included
	Included	Included
	Included	Included
4. Results Accumulation Network	\$19,810	\$19,810
5. Election Services (includes 49 service days for 2 elections)	\$63,700	\$63,700
6. Shipping and Handling	\$2,510	\$2,510
7. Performance Bond	\$8,730	\$8,730
TOTAL COST		\$590,710

This bid came in approximately \$70,000 under the first quote received from Election Systems and Software. The equipment is budgeted for in the current fiscal year.

Commissioner Evans moved that the Board of County Commissioners approve awarding the bid for an Election Tabulation System to Election Systems and Software in the amount of \$590,710.

Commissioner Curtiss seconded the motion. She asked if this was the equipment the Board saw demonstrated.

Vickie Zeier stated that was correct.

Commissioner Curtiss asked if the equipment tells the elector who they voted for.

Vickie Zeier stated it does not tell the elector who they voted for, it tell them in what race there is an over-vote. It cannot tell the name of who was voted for because an election judge would be standing by.

Commissioner Curtiss asked if the elector did over-vote, would they receive a new ballot.

Vickie Zeier stated the elector would request a new ballot. A ballot judge would be present to help the elector through that process.

Commissioner Evans asked if a press release would be issued concerning the new system.

Vickie Zeier stated she has set up an Election Task Force Advisory Council which includes members of the press. They will handle releasing the information to the public to educate them on the use of the new system.

Commissioner Curtiss asked if the elector would still use a pencil to make their selection.

Vickie Zeier stated the ballot will look identical to the current ballot being used. The only change will be inserting the ballot into the counter rather than a standard ballot box and knowing if a mistake has been made. Currently, if a mistake is made, it is not discovered until the ballots are returned to the County. A Resolution Board decides if they can determine how the elector wanted to vote, which can be difficult. The new system meets the HAVA requirements.

Commissioner Evans asked if everything is counted when the polls close.

Vickie Zeier stated that is correct.

Colleen Dowdall asked if this would eliminate the need for early pickup judges.

Vickie Zeier stated the early pickup judges would become polling place managers, as there would be so much electronic equipment. A pickup for the cartridges that contain the voting information will still be done, so they can be loaded. At 8:00 p.m. when the polls close, they will be able to give immediate results. Polling place managers will be required to arrive at their destination at 6:30 a.m. and still until 8:00 p.m. More information and training will be scheduled prior to putting this system in use.

The motion carried on a vote of 3-0.

**Hearing (Certificate of Survey): Shannon 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 as Tract 10 of COS 1914, located in Section 25, Township 14 North, Range 23 West.

Penny Shannon has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 20 acres in size, located near Alberton, MT. Penny Shannon proposes to create one approximately nine acre parcel for transfer to her daughter, Mirabai Henley, for residential purposes and keep the remaining approximately 11 acre parcel for residential purposes as well.

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The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 1914	1979	20 acres or more	Pack River Company	
COS 1354	1977	20 acres or more	Laural Leaf Ranch Co., Inc.	

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

Penny Shannon was present and came forward to answer any questions the Board may have.

Chairman Carey stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. He asked Ms. Shannon if she was going to transfer this land to her daughter.

Penny Shannon stated that was her intention, it is not an attempt to evade subdivision regulations.

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

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

Chairman Carey stated that Ms. Shannon would receive a letter of approval within a week or two. All necessary permits and other requirements will need to be obtained to build on the land. The approval today is only for the division of land; it does not guarantee access or services, nor does it grant Health Department, zoning or planning approval.

**Hearing (Certificate of Survey): Carey Family Transfer**

Chairman Carey opened the public hearing. He also noted for the record that to his knowledge he was not related to the applicant.

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 5B of COS 1614, located in Section 36, Township 14 North, Range 20 West.

John C. and Teri L. Carey have submitted a request to create 5 parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 10 acres in size located on Keil Loop. Mr. and Mrs. Carey propose to create four 1 acre parcels for transfer to their children, son James Carey (parcel 1); daughter Shannon Davenport (parcel 2); son John P. Carey (parcel 3); and daughter Sheila Carey (parcel 4); and a two acre parcel for transfer to their son, Jay Jodsaas (parcel 5). All of the parcels are intended to be used for residential purposes. The Careys will keep the remaining approximately 5 acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 1614	1978	Occasional Sale	Elaine Anderson	
COS 1440	1978	20 acres or more	Gene Anderson	

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

John Carey was present and came forward to answer any questions the Board may have.

Chairman Carey stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. He asked Mr. Carey if he was going to transfer this land to his children.

John Carey stated that was his intention, it is not an attempt to evade subdivision regulations.

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

Commissioner Curtiss moved that the Board of County Commissioners approve the request by John C. and Teri L. Carey to create five parcels by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Chairman Carey stated that Mr. Carey would receive a letter of approval within a week or two. All necessary permits and other requirements will need to be obtained to build on the land. The approval today is only for the division of land; it does not guarantee access or services, nor does it grant Health Department, zoning or planning approval.

**Hearing: Hellgate Valley Irrigation District (310 Permit)**

Chairman Carey opened the public hearing.

Marnie McClain presented the staff report.

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

Under The Natural Streambed and Land Preservation Act, also known as the 310 law, any person proposing a project on the bed or bank of a perennial stream must obtain a permit from either a conservation district or the Board of County Commissioners. The 310 law provides for a pre-construction review of projects on natural flowing perennial streams and rivers in order to minimize impacts to the stream and to other property owners.

This proposed project is within an area outside the Missoula Conservation District boundaries. Therefore, the administration of this application is the responsibility of the Board of County Commissioners.

The applicant is the Hellgate Valley Irrigation Company, represented by Mike Flynn. HVIC proposes to repair a rock diversion structure and to dredge within their ditch intake canal on the Clark Fork River.

The Clark Fork River is a perennial flowing stream as defined by The Natural Streambed and Land Preservation Act. Review of the project must consider the purpose of the project and whether the proposed project is a reasonable means of accomplishing the proposed project.

Fish, Wildlife and Parks waived participation in an inspection of this project. Mike Rotar of Inter-Fluve, a Bozeman consulting firm under contract with DNRC to provide technical assistance in the administration of 310 projects, has reviewed the project and provided comments. Mr. Rotar's report is attached to the staff report, along with the application.

The recommendations from Mr. Rotar include that rocks and boulders used to enhance the diversion structure should be placed upstream of, and on top of, existing rocks within the structure and the rock material should be a minimum of 2 feet in diameter. Fish, Wildlife and Parks only comment was that no more rocks be brought in.

Mr. Rotar recommended that the dredge material be removed from the project area to an upland site out of the floodplain. He also recommended that any sediment discharges that occur from dredging remain within the HVIC canal and prevent flows from re-entering the river through the bypass channel during construction. The use of temporary sediment control devices during construction should also be considered. Also, any vegetation damaged should be reclaimed and restored.

The Board needs to decide if the project to repair a diversion structure is reasonable and purposeful. The Hellgate Valley Irrigation Company is entitled to repair this structure. With the suggestions made by Mr. Rotar, the method of accomplishing it is reasonable. Mr. Flynn will also need to get additional permits from the Floodplain Department and the Army Corps of Engineers.

Mike Flynn, 2275 Roundup Drive, stated he sent paperwork to the Army Corps of Engineers and has not heard back from them.

Marnie McClain stated that Mr. Flynn should follow up with them and not assume anything. It would be best to get something in writing.

Mike Flynn stated that in the past, the Army Corp of Engineers has not required any permits. He will not be collecting any rock in the river, he did that the last time repairs were made and there is a pile of rocks on the island. He will use some of those rocks to fill in a few spaces on the diversion structure. The rest of the work will be in the ditch.

Commissioner Curtiss stated that one of the recommendations was to make sure none of the sediment got back into the river.

Mike Flynn stated that all the sediment should go down the ditch, nothing will get back into the river. The ditch would be made a little deeper. He is removing sediment from the ditch structure and won't be dredging from the riverbed, within reason. It is sometimes difficult to tell as they will be working in about 2 feet of water. No more than necessary will be taken.

Chairman Carey asked if Mr. Flynn had any problems with the Inter-Fluve recommendations.

Mike Flynn stated that he did not have any problems but it would require some explanations. Fish, Wildlife and Parks does not want him to bring in any more material but he will need some reinforcement to bring the dump trucks out to the site. In the past, FWP has required him to haul out washed rock so the dump trucks can be brought to the site. He must haul everything he dredges out of the area but he will have to bring in material to reinforce the ground to bring dump trucks to the site to haul out the dredged materials.

Commissioner Evans stated that there is no mechanism to check this work when it is completed. Would Greg Robertson be willing to look at the project when it is completed to make sure it was done correctly.

Greg Robertson stated he would be willing to do that.

Commissioner Curtiss asked what would happen to the material Mr. Flynn brought in to drive his dump truck over. Would that be removed when the job was complete.

Mike Flynn stated it would be very difficult to pick it all back up, he would be using 2-3 inch rocks and be picking up one rock at a time. That is why, in the past, Fish, Wildlife and Parks had asked him to use washed rock.

Marnie McClain stated that she did not see any problems with the work proposed, subject to Mr. Flynn obtaining the other permits necessary.

Mike Flynn stated that the owner of the island has given him permission to store rock on the island. Beyond the ditch intake canal, there are a few breaks in the ditch bank. He would like to use some of the dredged material to build the dyke back up. He also has the right to keep his easement clean which may require removing some rotting logs.

Commissioner Curtiss asked if the ditch is underwater during high water.

Mike Flynn stated that he can remember a few times over the last many years when it has been underwater, but normally it is not.

Commissioner Evans asked Mike how long he had been president of the ditch company.

Mike Flynn stated he has been president of the ditch company since 1982 and his great grandfather built the ditch in 1893. He had been maintaining and repairing the ditch most of his life to the satisfaction of the permitting agencies.

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

Commissioner Evans moved that the Board of County Commissioners approve the application by the Hellgate Valley Irrigation Company to repair and maintain their diversion structure on the Clark Fork River under The Natural Streambed and Land Preservation Act, subject to the recommendations by Inter-Fluve and that the completed work meets with the conditions of approval. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Consideration: Big Bear Subdivision (3 lots on 115 acres) – between Pulp Mill Road and Loiselle Road**

Jackie Corday, Office of Planning and Grants, presented the staff report.

This is a request from Dennis and Phyllis Kaye Sauter, represented by Territorial Engineering and Surveying, to create Big Bear Addition, a 3 lot summary subdivision of an 115 acre parcel. The subject property is located between Pulp Mill Road and Loiselle Lane, about two miles northwest of the Wye off Highway 10 West.

The property consists of open grass fields with fairly level to steep rolling topography that has been farmed for hay and pasture by the applicant. The land has no riparian areas and is out of the floodplain. Proposed Lot 1 will be 77 acres and contains the applicants' existing home and shop off of Loiselle Lane. Lot 2 will be 5 acres and has an existing mini-storage building with 22 units just off Pulp Mill Road. Lot 3 will be 33 acres and will continue to be farmed by the applicant along with the 77 acres.

The surrounding land uses range from approximately 3 acre to 20 acre residential lots to the east and south and large agricultural tracts to the north and west. The area is served by the Frenchtown Rural Fire District and children will attend Frenchtown schools.

There are three variance requests. The first is to allow Loiselle Lane to vary from the required 24 foot road width. The road is approximately 23 feet wide. The applicant is also asking to not provide pedestrian facilities on Loiselle Lane and Pulp Mill Road. Both these variance requests are supported by Public Works as they will not be adding any additional traffic to Loiselle Lane and this is still a very rural area.

The third variance request is to allow Lot 3 to vary from the required lot size ratio. Public Works and staff support this request as well.

There are three conditions of approval. Condition 1 shall show dedication of a right-of-way easement for Loiselle Lane at a width of 30 feet south from the centerline of the traveled way. Condition 2 amends the RSID waiver statement language to conform with Subdivision Regulations. Condition 3 is for a development covenant to address weeds and water for fire fighting purposes on future construction.

Chairman Carey asked for public comments.

Brenda Rankin, Territorial Engineering, developer's representative, thanked Jackie for a good job. This was an easy project and they were in agreement with the conditions as recommended.

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 Loiselle Lane to vary from the required 24 foot road width, based on the findings of fact in the staff report; approve the variance request from Section 3-2(8)(A)(iii) of the Missoula County Subdivision Regulations to not provide pedestrian facilities on Loiselle Lane and Pulp Mill Road, based on the findings of fact in the staff report; and approve the variance request from Article 3-3(1)(E) of the Missoula County Subdivision Regulations to allow Lot 3 to vary from the required lot size ratio, based on the findings of fact in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the Big Bear Addition Summary Subdivision, based on the findings of fact and subject to the recommended conditions of approval in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Big Bear Addition Summary Subdivision Conditions of Approval:**

1. The final plat shall include a dedication of a right-of-way easement for Loiselle Lane at a width of 30 feet south from the centerline of the traveled way of Loiselle Lane, subject to review and approval by Public Works and the County Attorney's Office. *Subdivision Regulations Article 3-2(3) and Public Works recommendation.*



2. The RSID/SID waiver statement on the final plat shall be amended to conform with the language contained in Subdivision Regulations Section 3-2(3)(E). *Subdivision Regulations Section 3-2(3)(E)*.
3. 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 shall include the following items:
  - a. The landowner shall maintain the property in compliance with Montana's County Weed Control Act and the Missoula County Noxious Weed Management Plan.
  - b. The landowner shall revegetate any ground disturbance caused by construction or maintenance with beneficial species appropriate for the site at the earliest appropriate opportunity after construction or maintenance is completed. *Subdivision Regulations Article 3-1(1) and Missoula County Weed Board recommendation.*
  - c. The landowner shall either install a 350 gpm well or sprinkler systems for any additional future structures or for expansions of the existing structures. *Subdivision Regulations Article 3-7(1)(E) and Frenchtown Rural Fire District recommendation.*

**Decision: Halling Farms Rezoning – Mullan Road, west of Reserve Street – POSTPONED FROM OCTOBER 8, 2003**

Monte Sipe: Good afternoon. For the record, my name is Monte Sipe, Associate Planner with the Office of Planning and Grants. This is a request by Crowne Brook Investments, represented by PCI, to rezone Tracts 1 through 6 of the Halling Farms Subdivision from its current zoning of C-RR3 "Residential" to the Halling Farms Special Zoning District (Multi-Family Residential and Neighborhood Commercial sub-districts). The property contains 33 acres and is located north of Mullan Road, approximately one-quarter mile west of the Reserve Street/Mullan Road intersection, south of the Hellgate Meadows Special District and PUD Subdivision. Just for a little bit of background, this project was originally presented to the Planning Board back on December 17, 2002, at which time the Board agreed to table the project to give the applicant some additional time to consider some of the comments in that public hearing and in the staff report and from agencies. The resubmittal of the proposal was presented back in front of the Planning Board on July 1, 2003 at which time the Board voted to recommend denial of the project. That was also staff's recommendation at that time. It was originally scheduled to go in front of the Board of County Commissioners on July 16, 2003 and prior to that meeting, on the 14th of July, the applicant requested a postponement to gather some additional information and consider some of the comments that were discussed in-between the Planning Board meeting and the time of the BCC scheduled hearing. At that time, the Commissioners agreed to table the request and rescheduled and set a hearing date of September 10, 2003. At that public hearing, staff presented the report and the recommendation and after further public comment and discussion among the Commissioners and the applicant, the Board of County Commissioners chose to table the project once again with a time uncertain for when it would rescheduled. That brings us up to date here today. You should have in front of you a packet, the most recent submittal packet which is what is being presented to the Board of County Commissioners now for consideration for the rezone request to the Special District. This was received October 14th in the OPG Office, so that's what you have in front of you. I believe I presented information to you prior to this meeting in regards to the September 12th letter. That was a letter from the applicant several days after the September 10th meeting. There were some proposed amendments based on comment at that hearing. OPG staff had requested that they go ahead and take those proposed amendments and incorporate them into an actual packet for review, and so that's what you have in front of you, the Attachment B, Halling Farms Special District, and with that several attachments, including a site plan for the multi-family section on Tract 6, a voluntary agreement for traffic mitigation contributions to the Mullan Road Mitigation Fund and another attachment addressing some conditional dedication for road right-of-ways. With that, I'll take a break and I'll be more than happy to answer any questions.

Chairman Carey: Thank you Monte. Would the developer or the developer's representative care to speak to this.

Gilbert Larson: My name is Gilbert Larson. I'm with PCI. I won't take much of your time at all. I think we've discussed everything there is to discuss about this one. There are, I have put an aerial photo up on the wall though. If it's alright, I'd like to come up and I might be able to answer a few questions that were raised in Planning Status that it may be helpful. In your packets, you have an aerial photo that was taken in 2001, about two years ago. To me, it's amazing, even in two years, there's been substantial change. This is the Sportsman Warehouse that doesn't appear in that photo in 2001. This is also Hellgate Meadows. To orient you, this is Reserve Street, this is Mullan Road. Halling Farms is this lot and then back over and down, so it's this area here is Halling Farms. Hellgate Meadows, the subdivision is 40 acres here. The zoning was approximately 100 acres and includes all of this portion around Halling Farms, out to Flynn Lane. Some of the questions that this may help with, I know there were some questions about how this fits in. The light with Wal-Mart is right here. Lot 1 of Halling Farms sits right next to that and you can even see where the work has begun on the right-of-way connect, north/south, through Lots 1 and 2 of Halling Farms. This street is Union Pacific. This street does have a signal with Reserve Street. This is one of the key elements, and I brought a copy but I don't know that you'd need to see it, of the approved grid, but this was one of the major grids was to come into this light. This light currently is underutilized and we're trying, through the grid, to be able to funnel more traffic to this light. So this is Union Pacific. It does go through a name change when it comes into Hellgate Meadows, it's called O'Leary Street, and that would be this street. The next major road is this one and then it comes into Hellgate Meadows. For comparison, in Hellgate Meadows, these streets that you can see that they've already started to construct, are the 27 foot wide right-of-ways that provide the east/west links within Hellgate Meadows. What has been suggested to us and what we're proposing would be to mirror this type of a plan here. We would have three main north/south links in these three locations and those would be a full width right-of-way, being 60 foot wide, and then similar to these lanes here that are shown, we would have the lane that would connect through from this point to this point and then it's proposed to continue on into Hellgate Meadows into the zoned portion. I think that's it. One other thing that was identified in the grid pattern is that there was a desire not to have east/west through here because they didn't want to have traffic going onto Flynn Lane. There was a desire to keep it off of Flynn and instead to have it moving north/south and then into these roads. The other item that we have looked into that again, I don't, unless there's questions, I won't go into it, but, there was an issue about the Growth Management Task Force and how this plan fits in. We did go through the Themes Document, looked at the goals that it talked about with regards to aggregating lots and planning and infrastructure and we believe that we're in full compliance with the goals that were set. This is the area that the Growth Management Task Force encouraged growth to happen. Last thing I'll mention

is the sewer that was extended comes right along the front of Halling Farms. There is a sewer main, you can even see the scar that comes back in between Lots 5 and 6 that will serve Hellgate Meadows, and then that sewer, of course, extends on out Mullan Road. So in terms of some of the questions this morning regarding orientation, I think that will help as far as seeing how this fits in. The large building in Hellgate Meadows, the 39-unit, sits right here, if there was a question about that, it's right in the center of Halling Farms and just to the north across the fence. So that might help with orientation. If there's any questions about the growth management, I did bring some charts that show those quotations and how we've addressed the different goals of the Themes Document, but I believe on the other hand that you're familiar enough with that and what we've done here that unless there's a desire to hear that, I think we've spent enough time on it. Thank you.

Chairman Carey: Any questions for Gilbert.

Commissioner Curtiss: I'd just like to remind you that the Planning Status meeting is to help us understand things but it doesn't put anything on the public record, so if you want something on the public record, you should say it here. In other words, if there were things, points that you made this morning that you'd like on the public record, you should state them, because Planning Status is designed for the staff to update us.

Gilbert Larson: I understand that there's no public record. I could probably just summarize it and say that it's been a long two and a half years. We believe that we have made some very positive compromises. We have recognized in dealing with this process that there were some ways that we could improve the transportation grid, both motorized and non-motorized. Those changes have been made and there's been a substantial change from what we presented two years ago. There have been reductions in density, there's been a change of uses to where there's no longer a sharp distinction between uses. There's now a blending and a transition as you go from Wal-Mart to the northwest. It is our feeling that with these changes we're now in compliance. We recognize that, especially with regard to transportation, there were issues that needed to be resolved that have now been resolved. Thank you.

Chairman Carey: Gilbert, I have a question while you're up, please. I noticed in reviewing your initial application and in your comments to the 12 review criteria for zoning, the last one, #12 points out that a special zoning district that allows for varied uses and a transition in intensity from higher uses on the east side of the site to the less intensive uses on the west side is the best and most appropriate use of this land. It seems like somehow in the process, that got kind of turned around, there's more intensive use on the west now than on the east. You're looking at some 200+ units on the west.

Gilbert Larson: What we have is that the most intensive use would be commercial and what we have is the larger commercial uses would be on the east part of the site. On the west side, there is no commercial allowed at all. And what we have done is to now provide some mixture within that. Maybe if I could come back up. So that the transition that would occur and the transition actually starts at this intersection. This is the most intense use that we have in terms of concentration of people and then it's going to proceed out to the northwest becoming less intense. So we have the Wal-Mart, which is the big box, 100,000, as you move out across this site and get into Lots 1 and 2, we've downsized to where it would be still commercial, but 20,000 square foot. There is ability on the north end of it to also to start to mix in some residential so that there's a mixture. There are 96 units allowed on this Tracts 1 and 2. Then as you move further, the size of the commercial reduces further to where you drop to 15,000 square feet. There's again 20 units on each of residential so again there's the mix. Then you come to Lots 5 and 6, and on 5 and 6, again, we're allowing the multi-family. Lot 6 allows no – maybe I should take them in order, excuse me, let me back up. Lot 5 allows commercial but it's restricted only to the front half out by Mullan so that we're keeping that transition away from Mullan. It's reduced again to 10,000, so that the transition continues. The multi-family is allowed toward the back or the front if commercial isn't used. Then Lot 6, to complete the transition, there is no commercial allowed at all. It is still, and maybe this is what you're asking, is there is still fairly dense development in terms of multi-family, but what you can look at is what's then going to happen on the other sides of the fence and that can be, there's nothing built yet, but this can be at even greater intensities in numbers of units per acre than what we're proposing here. So as you move from here across a fence, it drops to one level lower and then as you move out further towards Flynn Lane you can get down into single family housing. There is multi-family allowed all around as you move out this way.

Commissioner Evans: And the zoning allows it to go to what number of units.

Gilbert Larson: We're already on this site at 34 units per acre, so that's greater than anything proposed within Halling Farms. In this area, nothing is proposed yet in terms of actual structures. It does allow somewhere around 20 to 30 units per acre within what they call the mid-core. This is the core, then you can help me with the name, it's like the mid-level or transition zone in Hellgate Meadows. Then as you move outside of that in this area, it allows still multi-family, it's row houses, six units per building. The minimum lot size is 2,000 square feet, which if you do the math, that would mean that you could have over 20 lots per acre. We recognize that they're not going to be able to fit a six unit building on a 2,000 square foot lot but it would be very conceivable to do a 10,000 square foot lot and put a six-plex row house. That would allow for a lot of open space. That would result in about 25 units per acre, so still greater density than anything we're proposing on any lot within Halling Farms and that would be on this side. So, your densities do transition, you have densities here that could approach 25 per acre, here we're at 34 per acre. Our greatest densities with the revisions we've made are now at 20 units per acre and that's the highest density within our site. So, I think we've accomplished the goal of transition.

Commissioner Curtiss: While you're there Gilbert, can you point to a building that would be either 10,000 or 20,000 square feet, one of those rooftops.

Gilbert Larson: I can, I did look at that.

Commissioner Curtiss: Okay, good.

Gilbert Larson: Let me give you the full range. This is greater than 100,000. This is the Carmike and it's at 37,000. This is one of Russ Johnston's and this is approximately 10,000 square feet here. For 20,000, you'd be looking at about like this one right here. So, like we we're talking earlier, with looking at some of the restaurants and things in this area, those would be pretty close. Here's another one that's approximately 10,000.

Commissioner Curtiss: Is that the Outback?

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Gilbert Larson: That is the Outback.

Commissioner Evans: Remarkable how small they look on an aerial photo.

Commissioner Curtiss: Only when they have those huge ones beside them.

Gilbert Larson: Well, and that's right. This is, and again, this is Home Depot, which is one of the big box, which is the 100,000 type, and it comes literally, this is the corner of Halling Farms, right at my finger, so it's literally just a few feet away from the corner of our property, but again, that will allow some transition.

Commissioner Curtiss: Thank you.

Chairman Carey: Thank you Gilbert.

Commissioner Evans: Anybody else want to speak? Any testimony?

Chairman Carey: How much, I have a question for Greg, is traffic intensity a science in terms of commercial development vis-à-vis residences and how dense a residence can be and generate "X" amount of traffic compared to a 10,000 square foot commercial building.

Greg Robertson: Are you asking for a correlation between intensity of use and trip generation?

Chairman Carey: Yes.

Greg Robertson: There are published documents by the Institute of Transportation Engineers or ITE, they publish a manual called Trip Generation, it's a great read if you ever want to take the time. But it outlines a variety of uses and they use national averages based on actual statistics generated to make that correlation, so, there is variances but, nationally speaking, these are very good averages to use and are a good starting point and are in the ballpark.

Chairman Carey: And so, with Attachment B, which came to us yesterday, October 14th, I'm thinking you probably haven't had a chance to look at their proposal and generate your own numbers based on those.

Greg Robertson: I looked at it on a Saturday morning and fired it back to, so I have looked at it and it is reasonable given their proposal. I prefer to try and tie any sort of mitigation to actual traffic generated and the assignments that are used in terms of how traffic is distributed appears to be reasonable so I agreed with the proposal of PCI.

Chairman Carey: When you say how it's distributed, you mean, it's not going to be coming all onto Mullan Road and it's not going to be heading towards.

Greg Robertson: Yeah, correct, yeah. A lot of times, traffic behaves differently depending on the road network. If you have a good grid system, your distribution of traffic from a particular parcel is a lot different than if you have, for example, like Phantom Hills, basically one way in and one way out, and Mullan Road is the corridor. This has multiple ways in and out so the distribution is a little bit greater so that the impacts onto one particular road aren't as great.

Chairman Carey: And we're talking about a total of 336 new units, plus commercial.

Greg Robertson: Correct.

Chairman Carey: Okay.

Commissioner Evans: I realize this is a decision and a not a public hearing, but if there's anyone else who'd like to speak, I'd like to offer them the opportunity.

Chairman Carey: Certainly.

Commissioner Evans: There being none, I guess if you want to close the hearing, I'll make a motion.

Chairman Carey: Well, it's not really a hearing, it's a decision, right, or did we reopen the hearing. Nope, it's just a decision here.

Commissioner Evans: Okay. I'd like to say some things.

Chairman Carey: Certainly.

Commissioner Evans: When this first came in, it seems like forever ago, I was not in favor of this project. I felt it was a little too dense for a variety of reasons. But I believe they have done a great deal of changes to make it more acceptable. I remember with great suffering the six years of growth management and the conclusion that was arrived at, that the growth was supposed to go out in the Mullan Road area. The sewer has been put in to accommodate large growth and I think these folks have made serious effort to be cooperative in making changes and while it gravels me no end, people are always saying you should walk, ride your bike or take the bus, well, living where they are proposing to have housing, just across from Wal-Mart, it's next to the theater, there are stores all around it, people could live in those units and they could walk or ride a bike or take the bus, so I think that they have met some of the goals of folks that support that kind of stuff. I think that as long as Greg is satisfied with the road situation and as long as they are making every effort to attach this zoning proposal to the road grid that we have proposed and adopted a long time ago that I believe that this should be approved and I would so move, contingent on the Attachment B as the condition.

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Chairman Carey: Do you have any comments, Commissioner Curtiss?

Commissioner Curtiss: I do. This is different for us to do zoning, a rezoning, instead of a subdivision and so we've had to kind of change our thinking to figure out what we're really supposed to be considering and there are 12 criteria to consider for zoning. I have trouble saying yes to the majority of them. 1) *Whether the zoning is compatible with the Comprehensive Plan*. Well, the Comprehensive Plan, of course, for that area is being worked on at the moment and the two lots that are proposed with the most housing, 5 and 6, at this time, it looks like they're recommending four per acre for Number 6 and eight per acre for Number 5. So this is quite a bit more dense, because when I do the math, I get about 24 per acre for Lot 6, if you just consider Lot 6 by itself. 2) *Whether the zoning will lessen the congestion in the streets*. While it does add to the grid for the area, I can't see how you could say it would lessen the traffic congestion on the streets other than offering those connections, because you're going to be adding so much more to it, so, I'd have trouble answering that one yes. 3) *Whether it will secure safety from fire and other dangers*. It's not in the Urban Interface, so we can say yes to that one. 4) *Whether it promotes the health and general welfare*. The applicant says that this provides a reasonable transition buffer from Reserve Street to the housing and in some ways I think it does that but I just think that the housing part of it is too dense to do that. 5) *Whether the zoning provides adequate light and air*. I can answer yes to that one. 6) *Whether zoning would prevent overcrowding of the land*. Again, I'm not sure that I see this buffer zone as being what I would, that's going to go from that big commercial stuff on Reserve Street to what's on Flynn Lane in a way that is, I still see it as too dense. 7) *Whether the zoning will avoid undue concentration of population*. Again, that's a lot of housing to put in, in one area. 8) *Whether it facilitates the adequate provision of public services*. That one we can answer yes. 9) *Whether the zoning gives reasonable consideration to the character of the district*. When you look at those photos, we all know that it's going to change to some degree, but across Mullan Road is farming at this time and it's going to be, a lot of that won't change too much because of the floodplain, other than right by the road maybe, so, you know, it could, but again, I'd like to see a different transition. 10) *Whether the zoning gives consideration to the peculiar suitability of the district for the particular uses*. And when you listen to the way Gilbert describes the transition, it makes sense. I guess the bad thing about it is that it's too bad that Number 6 is the one that's ready right now, because to me, that seems much more intense, even though you call commercial more intense, it seems more intense than the rest of it and it ends up being the furthest thing west. 11) *Whether the zoning was adopted with a view toward conserving the value of the buildings*. Sounds like most of the buildings will be removed as development happens, which is understandable when you consider that it's basically used for farm right now. 12) *Whether the zoning will encourage the most appropriate use of land*. It's still, I just have trouble with the density, the height of the building and the size of the footprints. When you look on that map, it looks different, I guess. I just know that I wouldn't want a great big building going next to my property if I lived on Flynn Lane and had one or two acres. So, I'm having trouble finding it meeting the criteria. I do have to say that I think it's good to plan for the six lots rather than individually if possible. Through the time period, they have improved the transportation connections, the easement along the road and the contribution to the Mullan intersection are good and the blended uses are good. I do have a problem with, and maybe it's just a definitional thing, but when the proposed neighborhood commercial doesn't come anywhere close to what we normally, in Missoula County Zoning Regulations, call neighborhood commercial, it's much bigger than that, so maybe it's just that it shouldn't be called that. I think one of the biggest drawbacks is that it's not all ready to go and it's going to actually develop from west to east and so, therefore, some of those connections that we need so badly aren't going to happen until the development happens.

Commissioner Evans: May I ask you a question. If they were persuaded to reduce the number of units on Lot 6, would that help?

Commissioner Curtiss: Yeah, I think it would. The other thing is, I don't know, if we adopt this zoning, in order for them to get the sewer, I'm sure that they'll have to annex into the City, the City doesn't have to adopt our same zoning. Is that correct Colleen?

Colleen Dowdall: If they don't then they have to have a separate zoning hearing, that's my understanding.

Commissioner Evans: It's my recommendation to the developers that they make us a proposal for a reduction in density on Lot 6.

Chairman Carey: Well, for me, at least, it's just too late in this process to make an informed judgment on what that would lead to. I mean, I think the developer and his agent have worked very, very hard to meet the criteria for this zoning. We've listened, we've all thought hard as well about this and I have to agree with Commissioner Curtiss' fundamental analysis that they haven't met the criteria for zoning and I'm just not persuaded that this kind of last minute reduction on Lot 6 would fundamentally change that, so I can't second your motion at this time.

Commissioner Evans: One of the concerns that I have, having been here a long time, is we've had subdivisions brought before us over the 24 years that for a variety of reasons were refused. Ultimately, those folks took them to court and we lost and what we got was far less than what they had offered in the first place. There's one up on Miller Creek Road, goes back quite a ways, that what we were offered was significantly better than what we ended up with after we went to court. My concern is that if we are sued that we will have a hard time justifying a no on this vote, given the movement that they have made over the two and a half years. Especially given the fact that the sewer has been put in with an eye to high density, that the Growth Management Plan that we adopted calls for higher density in that area over the whole rest of the town and so I think we would be hard pressed to show a legitimate reason for turning these people down and so I'm trying to find a compromise position here that will give you some comfort on the number of units that would be on Lot 6 and I have a feel that the folks making this proposal would feel a little comfortable with dropping a few units off in order to get approval of this subdivision, and I see Mr. Crawford shaking his head yes.

Chairman Carey: My personal view, it really, I mean, this has been going on for a long, long time and for us at the very last minute to make a judgment on this, it's just inappropriate. I mean, I think they have worked hard to meet the criteria but this latest submittal came to us just yesterday, I mean, it hasn't afforded staff the chance to adequately review it, in my opinion. Our legal counsel, certainly, in my opinion, hasn't had a chance to devise legal reasons for or against adopting this. We can't expect people to do, we can't expect our people to do business this way and it's been a long, long time. And so, if somebody wants to sue us I think they have every right to.

Commissioner Evans: One of the things I'd like to point out is that on most of the subdivisions, when we make a decision, and I'll include the zoning, the attorney writes the findings after the decision is made and can recommend to us prior to the decision being made whether or not she can find those findings and the fact that it has taken two and a half years is one of the reasons I think we need to deal it. And I think we either need to say yes or we need to say no, the public shouldn't be kept waiting for government to take so long to do something, and so I would recommend that we approve this zoning and let them get on with their life.

Chairman Carey: I think in this case, we acted within our prescribed parameters of action. I think it's the developers themselves that have asked us to take a little more time because they want to come back and they want to see if they can make a proposal that would be acceptable. I don't really think it's been up to us, this delay hasn't been up to us. We haven't said yes at this point and we haven't said no. So, do we have another motion.

Commissioner Evans: Could we ask the developers if they have anything they'd like to say at this time?

Chairman Carey: Certainly.

Gilbert Larson: What I'm understanding is that a lot of the focus seems to be coming down onto Lot 6, which in one way is fortunate in that the owner of Lot 6 is with me today so we can, we could consider Lot 6 and what's appropriate or not. I think, though, that in order to look at that, what I would ask is, two and a half years ago before I was even involved with it, Joe came forward, met with OPG about doing a City zoning for just Lot 6, only including Lot 6, doing nothing else. What was suggested to him would be to do a "B" residential within the City which would allow 16 units per acre, that was given to him as the base. He was encouraged by OPG at that time that if he could involve his neighbors, if he could deal with all of the sites, that there would be some benefit. Joe has since then spent hundreds of hours, tens of thousands of dollars having engineers from TSB and others put together site plans, he's gone to, to great extent, to get six owners about as diverse as you could be, together and in agreement on a plan and to me, what I can't understand and what's hardest for me is that what you have before you is just what's been encouraged. You've first done the hard improvements, you've done the things like the sewer and the streets and the infrastructure for this area to support high density. Then there's also the softer things where you've asked or encouraged people to do things together on a comprehensive plan and here we have an owner that was told he could do 16 units per acre, he's come forward, gotten the other owners together, put together a plan that I haven't heard anybody say anything bad about. It's a good plan, it provides the links, it provides things that you could never have if we were just dealing with Lot 6. In return for that he has asked for an increase in density on Lot 6. That's what he was told to do by OPG two and a half years ago. To me, it would be absurd to ask him to accept 16 units per acre or what he could have done two and a half years ago without involving his other neighbors. He could have done 16 units per acre then and that's what was encouraged by OPG was a "B" residential in the City. Why have we gone through all this and put together this plan that encourages the types of links and non-pedestrian and all these other things if there was no benefit to Joe. To me, in terms of a compromise position, if it were to be lowered, we have, I believe it's 5.28 acres. If it were to be lowered to, if we were to cut out 14 units to 106 units, it would not change the site plan, we're not, and that's something else that's troublesome to me, is that we talk about changes. I think it's important to note that the basis, what you have in front of you in terms of commercial and residential and connections, haven't changed in the two and a half years. We've made refinements, but the documents you have were submitted many weeks ago, they were reviewed by Greg and Colleen, there haven't been last minute changes to the heart of what's proposed. To me, at least, the bottom line as far as what would be fair on Lot 6 would be 106 units and that would be giving Joe very little encouragement for what he's gone through in the last two years. To me, it's still reasonable at 120 units, it's still less than what's across the fence and that's not much of a benefit for what he's gone through the last two and a half years. I believe that would, well I know that would be the bottom line that would even make it reasonable for him to involve his owners, the other owners. I would just ask though that you, to me as I read through the Growth Management Task Force and read the goals about trying to aggregate lots and get common people to join together and to mass a plan, to me to vote no on this is discouraging that from ever happening again in the County. I'm not going to be encouraged to go and try and get a group of owners together. The reason they do that is that they're encouraged that by doing it they'll receive some benefit or some bonus and what I hear being said is that's not the case. They're even being told they're going to get less than what was done across the fence.

John Geeson: My name's John Geeson, I live at 620 South Third West. I am a realtor so you should know that, maybe. And I've just become aware of this development here, I wasn't even positive what it was until today when I got a look at it. But just as you're discussing this today, it's very clear to me that this is an area where if you're going to have density, this is where you want it. I mean, you're right off the commercial, you have the properties next to it that are already higher density okayed than this one they're proposing here on, talking about Lot 6 in particular. If you don't put those extra 20 or 25, whatever lots you're talking about, those 20 or 25 people are going to go out the next step out. I mean, they got to go someplace else and the very best place to put a high rise apartment building, if you want to say, is right there where they can walk to Wal-Mart, walk to all the other facilities that are right there and minimize the rest of the cutting out in the County, so I honestly don't understand the concern about changing the neighborhood where you don't have a neighborhood, like was mentioned, it's farm, it's going to change over the next five years. Look what's happened in the last five there. Look at the density and the number of apartments, they're up in Hellgate, they're up at the bank on the back streets mixed in with the commercial, I mean this is the place to do this kind of development and you're not messing up anybody else's neighborhood, you're not trying to build a six-plex next to single unit housing or anything like that and the fact that there's nothing there, you're basically laying out what this is going to be and from what I've seen, it certainly looks like a nice layout and a nice mixture of commercial buildings that will be in good shape and a gradient of change for the neighborhood that comes from commercial to multi-family to single family out on Flynn Lane. I don't understand how you could get a better proposal for that area and use in that area. So that's from somebody just looking at this today, like I said, in the last half hour, and my view.

Chairman Carey: Thank you. Denise?

Denise Alexander: Denise Alexander with OPG. I wanted to speak to what Gilbert had said about Mr. Crawford's first meeting with OPG and that was basically with me. And what he came in and told us was that he was looking at a fairly high density multi-family residential development on Lot 6. I knew that it would have to connect to sewer in order to accommodate that type of development and so we looked at what kinds of City zoning would permit something close to that density within the residential range. "B" residential is the highest residential zoning district at 16 dwelling units per

acre, so that's what I told him would accommodate what he wished to do. However, at that time, I knew that the Comprehensive Plan wouldn't support it and Hellgate Meadows was going through the process so I gave that as an example as to something that is somewhat higher, is higher density than the Comprehensive Plan permitted, however, it was being supported because of their, because of the amount of property being rezoned and subdivided, that their design standards and their transition was something that was helping to support that rezoning and I also don't believe that the density of the Village General and the Neighborhood General that surrounds this property is as high as Mr. Gilbert represents, although it is difficult to calculate because it's very flexible. But, townhomes in the Village General zone have a minimum lot size of 2,200 square feet for one townhome and they're limited to no more than six connected and no more than 20% of the lots in that zoning district can be developed that way. In the Village General zone, it's the same, the Neighborhood General Zone, six units and no more than 10% of the lots in the Village General zone, which is the higher intensity zone, no more than six units in a row at 20% of the lots. The multi-family in the Village General zone are limited to eight dwelling units in a building and limited to 30% of the lots and in the Neighborhood General zone, no more than four units to a multi-family building and no more than 10% of the lots. And the remaining lots of those two will be developed with single family homes. So, those are just a couple of things I wanted to offer to you as information.

Chairman Carey: Thank you. Gilbert?

Gilbert Larson: I'll keep this short and I'll try to get my mouth right on the microphone. I told you I'd gone through the Themes Document and I decided to put one up. What it reads in the Themes is "Design should minimize neighborhood opposition and maximize constructive neighborhood involvement." I've now been to more hearings than I probably should have been, between Planning Board and Commissioners, regarding Halling Farms. We just had our first public comment other than me as the developer. There's not been one person to speak in opposition. I thank you for your remarks and I'd like you to know that's unsolicited. We've have not, there's no relationship there, we didn't, we haven't asked anyone to come and talk. I've been doing this now for quite a number of years. To me, one other thing that's really being missed here is that how many other times do we have development anywhere near this size or involving commercial where there's no one there to speak in opposition. There's been no opposition. I read the paper. I know what's happening a couple blocks from here, right in the heart of the City where they want to take an existing Safeway, move it over a block and expand St. Patrick's Hospital. Now, forgive me, but to me that's seems pretty benign. It didn't seem like it was going to create a lot of waves when I first heard about the project but I've followed it in the paper, I've followed it on the news, and it's created a huge uproar. There've been people from all over town down protesting what's going on a couple blocks away in the heart of the City. It's got to be noted that here we have, as you've stated, a couple hundred, up to three hundred residential units, commercial, all this going on in the Mullan Road area. We have not had anyone speak in opposition. We've now had one person speak in favor. You have an opportunity. It's one that I don't ever see it happen from my end, it's where you have something like this and no one in opposition and I have a hard time understanding why you as Commissioners can state opposition to something that your own constituents have no opposition to, that meets the plans you've set out and that matches the infrastructure. These folks in Halling Farms are paying for that sewer, they're in the RSID that you set up. It was based on allowing for 7,000 more additional homes to be built in that area and I don't understand.

Chairman Carey: For me, I'm largely going by the recommendations of the staff that the, and my own personal judgment, that the zoning criteria haven't been met. We could poll people in many different kinds of ways, I mean, if you want to just sort of ask everybody at the corner of Reserve Street and Mullan Road what they felt about 336 units being added in the near future a half mile away, you might get a lot of no's, they might tell you, gee, I've already sat here for four minutes or whatever, I don't want to sit here for eight. I don't know, it's just conjecture, but it seems to me that the findings provided by the staff support denial of this request based on that it just doesn't meet the criteria that we've established for rezoning.

Commissioner Evans: May I point out that just a block or two east is Copper Run, I think that's the name of the place, and while I don't know the exact number of units per acre, it's a very dense new apartment area. We have, out on Expressway, new apartments that are being put in that are very likely, just given the size and the number of them, probably equal in density to what these folks are asking for and that seems to be being done all over town and why we'd say no on these when the staff says they haven't had time to properly assess this new proposal is beyond my comprehension, guys.

Chairman Carey: That would be one good reason for saying no, I mean, we haven't had a proper assessment, I'm not basing it necessarily on that, I'm basing it on a look at the zoning criteria, and in my judgment, they haven't met it. Anything else.

Commissioner Evans: Sorry guys.

Commissioner Curtiss: The other thing that I think is that the buildings are too high and the trouble with the road standards is, like I said, some of these folks aren't ready to do that yet, so until those new roads are going through Lots 3 and 4 and 2, it doesn't really take care of the traffic. It's good to have a connection, but it won't be there when they need it.

Colleen Dowdall: Actually, I think the conditional public access easements do provide for that.

Commissioner Curtiss: As they develop.

Colleen Dowdall: As they develop, or if they don't develop, within a certain amount of time.

Commissioner Curtiss: I don't see any timeline.

Colleen Dowdall: It's not in the zoning, it's in the actual document, the actual conditional public access easement.

Monte Sipe: It is in the conditional access easement, but keep in mind that is just an example of one that would be signed, it's not the relevant one to each particular piece of property, so each one.

Colleen Dowdall: It is, it has all of the legal elements that I wanted in it and it has been approved by each landowner.



Commissioner Curtiss: But it says 10 years.

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Colleen Dowdall: It says 10 years.

Chairman Carey: We need a decision of record today.

Colleen Dowdall: I just wanted you to know that that was one element that we had our concerns about and that our findings make that, express that concern, but it is something that was taken care of for the conditional public access easement.

Commissioner Evans: Mr. Crawford or Mr. Larson have their hands up.

Gilbert Larson: Just one last concern, we're obviously going to have to go back to the owners and discuss this. One other thing that I'm confused on, when the proposal first came forward there was no residential uses on 1 through 4. Is that a concern with the Commissioners that we have mixed use on 1 through 4.

Commissioner Evans: Not with me.

Gilbert Larson: Not in particular.

Chairman Carey: Well, I mean, it's a cumulative impact that concerns me with regard to the rezoning.

Gilbert Larson: One other problem that I have that and actually I didn't ask the question, we held a meeting, now it would be about six months ago where Colleen asked the question of OPG of what would it take in terms of compromise or what did we need to do in order to satisfy it and there was never an answer given. It was said, well, keep making proposals, we'll tell you if you hit the mark. We've tried to do that. What is difficult is that what is before you today has hit the mark. It's less than what's there, it's less than what's in the area. You talk about the Comprehensive Plan and heights and standards. Those same heights were supported by OPG across the fence. I have a hard time, across the fence allows 45 feet heights, we're limiting to 42. The densities are greater and those were supported by the Comprehensive Plan and OPG across the fence. We recognize there's some minor differences but if we're talking about building height, if we're talking about density, then those issues, we're in compliance.

Monte Sipe: I'd just like to respond to a few items. In regard to the discussion six months ago and the meeting, this was late, late in the process. I provided you with a packet, kind of a history of e-mails and so forth and early on when I received the application when I was the case planner on this project, I had requested information that would help to analyze the proposal and come up with a staff recommendation. For various reasons, the applicant chose not to do that and so we moved forward in the rezone process with what OPG or myself, as the case planner, was not comfortable with the amount of information to support the project proposal.

Commissioner Evans: We're you not asking for things that are required in a subdivision.

Monte Sipe: No. No, as a matter of fact these are regulations right out of the zoning. So, a lot of them had to do with subdivision type of detail and analysis and so, basically, the project was moved forward because they had submitted an application. OPG wasn't comfortable with the amount of it, but nevertheless, it was taken through.

Commissioner Evans: I think I've heard our counsel say that you were wanting things that were not required. Is that correct, Miss Attorney.

Colleen Dowdall: I think what the discussion I had with OPG at that time was that we were either asking for things that would be required at subdivision or at a PUD, but for a special district that if, and as I recall, some of the things were a traffic study and actually, that's the only one I can think of at this point. And I know we subsequently got a traffic study so I'm not sure what else, except, I mean, we don't know what uses will occur on Lots 1 through 5. We know which ones will be permitted but we don't know what's going to go there. So, and I was concerned at that point about not knowing where the roads would be, the access easements, and so that we dealt with that outside of the hearing process also. So I guess I'm, I didn't get the packet that showed the chronology for you but I have copies of all of, or at least most of that, I'm sure, in my file. Actually, the later stuff I do.

Commissioner Evans: Well it would seem to me that if someone were to come in and say, we've got six lots here, we want to fill it with single family homes, we would look at it and say, gee that doesn't fit the Growth Management requirement, which was to put a heavy density in that area. And, people would say, gee that's really dumb, it doesn't fit the area at all. Look at all the commercial and things next to it that are much higher density and why didn't you allow that and so it seems to me that if it's a question of numbers, then we ought to tell them what number they have to hit and if it's based on the subdivision next to it, then I think they're in fairly good compliance with what's the neighbors, so I fail to see anything wrong with their proposal. I think that they have done what Growth Management said. They've done what our sewer installation indicates and we're still going to say no. Makes no sense to me guys.

Denise Alexander: We also want to just respond to the comment about height of buildings. In this zoning district, it's 42 feet for residential development and 40 feet for commercial and I know we just keep on comparing things to Halling Farms, but for your information in Halling Farms, I mean Hellgate Meadows, the building height for residential is 35 feet and in the Village Core, which is the small amount of neighborhood commercial that's to the west of Halling Farms, the building height for commercial buildings is 45.

Monte Sipe: That would be, basically, the Village Core is the stuff that would abut Home Depot and that's the pink and that's where the 45 height is allowed.

Denise Alexander: Only in the Village Core.

Monte Sipe: And the rest of the this, the entire rest of this, which is approximately 80 acres, 70 acres, is the 35, and you know, I hate to keep comparing these two, but there is some obvious difference of opinion on some of the densities and so forth that would be permitted in the zoning to the west than what is being recommended or what is being proposed.

Chairman Carey: And you were pointing to the western half of Hellgate Meadows.

Monte Sipe: Yes.

Chairman Carey: As that lower density.

Commissioner Curtiss: Eastern. Eastern is where the height is.

Monte Sipe: Halling Farms is this chunk right here.

Commissioner Curtiss: Oh, west.

Chairman Carey: Right.

Commissioner Curtiss: Yeah.

Monte Sipe: This is west.

Chairman Carey: Patty's going to be confused, I think, in terms of it. The eastern half of Hellgate Meadows as having a higher height limit of 45 feet, okay. Yes sir?

Joe Crawford: For the record, my name is Joe Crawford, I reside at 4100 Mullan Road. I'm the sponsor and developer applicant. I've tried to follow all the recommended protocol over the last two and a half years. I've held my piece until now. Quite frankly, not to be condescending in any way to anyone, I've been involved with over \$6 million of real estate transactions in 20 states and I have a 27 year career in the real estate business. I had hoped to do real estate development in Missoula. What was originally conceived on Tracts 5 and 6 was a 236 apartment complex that was modeled after a transaction I did in Clearwater, Florida, in 1998-1999. That municipality welcomed us with open arms. Many of the features that were praised down there were criticized by your staff. That particular apartment complex, you should know, won the award given by the National Association of Homebuilders for the best apartment, garden apartment community in the United States in 1999. So I'm not a pick up truck builder, I'm not speaking, trying to squeeze a couple of units out of anybody. I've never been more frustrated. I've never experienced such inconsistent, arbitrary and capricious behavior on the part of your staff. This deal could have been negotiated in 90 days if there had been a willingness to negotiate in good faith. It should not have taken two and a half years. The delay was not all my fault or your fault, it was a series of factors. But not withstanding the lack of a Growth Policy for awhile, not withstanding the difficult decisions that needed to be made, it could have been resolved in 90 days if the parties had come together with a willingness to meet, compromise, it could have been done. I can't address a preconceived notion that density is bad, okay. I can show you projects that I've been associated with and that other developers have built with density higher than we are requesting that look better, feel better and are less dense than what's built at 16 units an acre with 12-plexes scattered all over a site, okay. So, we can argue about that and it's not my intent to do so, but I can't change someone's mind that thinks that density in and of itself is wrong or bad, I can't construct an argument to even address that. We had a plan initially with this transaction where the property owners themselves came together and said the first four tracts wanted commercial, they wanted commercial. Tracts 5 and 6 wanted multi-family residential, a very appropriate transition of uses from Reserve and Mullan, heading to the west and to the north. Based on the suggestions and feedback and comments from your staff, we added mixtures of uses to all of the sites. Now I feel I'm being penalized for having done so. If the density with respect to Tracts 1 through 4 were removed, does that eliminate your problem. It wasn't our request, we were responding to comment. One of the Commissioners just stated that there are comparable projects all over the City. This is true. I've done my homework, I've looked at the sites. "B" residential actually with unit mixes of one and two bedroom units only will allow densities as high as 25 units an acre, and folks, they're out there, they're on the ground. We're not asking even for that density. The last thing that I would share with you is that over the course of the discussions with OPG, there have been a couple occasions, two occasions where dialogue seemed to heading to a positive conclusion and there was an indication that there might be support by OPG for our transaction subject to conditions and with density roughly 20 units an acre. So if you want to know where 106 units comes from, that's it. Based on that prior dialogue on two occasions, those discussions were held. They don't have the authority to approve that, we understand, but we acted in good faith. I submit to you that we have been more than reasonable, wholly consistent with what exists in the marketplace today with regard to product and density and finally, if we're forced to do so, we will protect our property interests. Thank you very much.

Commissioner Evans: I have a question for Mr. Crawford before he sits down. What's the acreage on Lot 6?

Joe Crawford: 5.28 acres.

Commissioner Evans: Can you tell me what you paid in taxes last year on that piece of property?

Joe Crawford: Probably about \$2,400 or \$2,500.

Commissioner Evans: Can you tell me what kind of taxes you would likely pay if you had 120 units on there.

Joe Crawford: Multi-fold.

Commissioner Evans: The reason I ask that question is years ago, and I don't know where it went, we used to ask for every subdivision or every thing that came before us, what the taxes were and what kind of taxes we would likely accrue into the County coffers if the project were approved. And I would remind folks that every year we have a difficult time having enough money to pay for all the services we need and that pays all of our salaries. And so I would remind you that we will be losing a significant amount of tax money if this is not approved and so when budget time comes around and we're short of money, I might remind you that it's probably a good share of our own fault.



Chairman Carey: Okay. Anybody else?

Commissioner Curtiss: I would move that we deny the request for rezoning based on the fact that it does not substantially meet the 12 criteria required for review.

Chairman Carey: I'll second the motion. All in favor say Aye.

Commissioner Curtiss: Aye

Chairman Carey: Aye. Opposed?

Commissioner Evans: No.

The motion carried on a vote of 2-1 (Commissioner Evans opposed).

There being no further business to come before the Board, the Commissioners were in recess at 3:10 p.m.

#### THURSDAY, OCTOBER 16, 2003

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

Claims List – The Commissioners signed the Claims List, dated October 9, 2003, with a grand total of \$1,033.19. The Claims List was returned to the Accounting Department.

Monthly Report – Chairman Carey examined, approved and ordered filed the corrected copy of the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending September 30, 2003.

#### ADMINISTRATIVE MEETING

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

Extension Request and Addendum – The Commissioners approved and signed a letter and Addendum to Buy-Sell Agreement for Additional Provisions, dated October 16, 2003 to Doug Woodahl and Greg Park, Harley Davidson Motor Company, approving their extension request to the closing deadline for Lots 8 and 9, Block 9 – Phase 2 and Lot 10, Block 9, Phase 5A, Missoula Development Park. The new closing deadline will be April 1, 2004, with the following conditions (as set forth in the Addendum): 1) All contingencies shall be leased by October 24, 2004; and 2) The earnest money shall be increased from \$10,000 to \$20,000, and shall be forfeited if the sale does not happen or shall be rolled into the sale price if the sale occurs. The documents were returned to Barb Martens in the Projects Office for further handling.

Agreements – The Commissioners signed two (2) Lease Agreements, dated October 16, 2003, between Missoula County and 1) Mr. and Mrs. Blank and 2) Mr. and Mrs. Means ("Lessees") to allow them to lease a portion of Greenwood Park in Lolo for the purposes of keeping horses in the park area. The term of the lease shall be for a term of one year; Lessees agree to pay \$1.00 per year as rental payment. Lessees shall continue to work towards keeping the lease area free of debris. The documents were returned to Lisa Moisey, Parks Coordinator, for further signatures and handling.

Contract – Chairman Carey signed a U.S. Environmental Protection Agency Cooperative Agreement (#BF-98899201) with Missoula County for the Brownfields Cleanup Revolving Loan Fund grant of \$1,000,000; MAEDC will contribute \$200,000, making a total of \$1,200,000. The Project Period is November 1, 2003 through October 30, 2007. All other terms and conditions are set forth therein. The document was returned to Jenifer Blumberg in the Office of Planning and Grants for further handling.

Agreement – The Commissioners signed an Agreement for Provision of Professional Security Services between the Missoula County Sheriff's Department and the University of Montana for the provision of law enforcement, crowd control, and general security at University event or events conducted in University facilities. Compensation and other conditions are set forth therein. The term will be July 1, 2003 through June 30, 2004. The document was returned to Marlene Thompson in the Sheriff's Office for further handling.

Request for Action – Per recommendation by the Offer Review Committee on October 15, 2003, the Commissioners signed a letter to Walter Wick and Bill Wise of Properties 2000, rejecting their full price offer to purchase Lots 3 & 4, Block 9 and Lots 3 & 4, Block 11 – Phase 2, Missoula Development Park, because the proposed use (new and used car sales) does not meet the vision of the Park at this location.

Agreement – Chairman Carey signed a Memorandums of Agreement, dated May 14, 2003, between The Missoula County Park Board (the "Board") and the Mount Jumbo West Little League for assistance with park development. The Board agrees to provide up to \$3,000 in matching funds from the Capital Matching Fund Program (Spring FY03), and must be spent by May 30, 2004. The document was returned to Lisa Moisey, County Parks Coordinator, for further handling.

Other items included:


- 1) The Commissioners reviewed and approved changes to Senior Management Contracts. Steve Johnson of Human Resources will draft a letter for the BCC and Senior Management to sign.

- 2) The Commissioners voted to approve amendments to the Lolo Community Council ("LCC") By-Laws. These changes will be sent to the LCC for their adoption.

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

**FRIDAY, OCTOBER 17, 2003**

The Board of County Commissioners met in regular session; a quorum of members was present in the forenoon. Commissioner Carey was in Hamilton attending a meeting of the Mental Health Board; Commissioner Evans was out of the office all afternoon.

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

**MONDAY, OCTOBER 20, 2003**

The Board of County Commissioners did not meet in regular session. Commissioners Carey and Curtiss attended the all-day Economic Forum held at the Florence Building.

**TUESDAY, OCTOBER 21, 2003**

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 evening, Commissioner Curtiss participated in the Air Quality Board Hearing held at City Hall regarding the County Redesignation Application.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated October 17, 2003, with a grand total of \$164.68. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtiss signed five (5) Claims Lists, dated October 20, 2003, with the following grand totals:

- 1) \$23,017.01;
- 2) \$1,088.79;
- 3) \$4,143.01;
- 4) \$68,326.24; and
- 5) \$35,000.00.

The Claims Lists were returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtiss signed three (3) Claims Lists, dated October 21, 2003, with the following grand totals:

- 1) \$65.00;
- 2) \$13,382.99; and
- 3) \$61,289.57.

The Claims Lists were returned to the Accounting Department.

Indemnity Bond – Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming C-SPAN, Washington, D.C., as Principal for Missoula County Public Schools Warrant #72428, issued August 1, 2002 on the Missoula County General Fund in the amount of \$106.90 (for U.S. Congressional Directories), which cannot be found.

Indemnity Bond – Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Christiann Koepke as Principal for Missoula County Public Schools Warrant #278285, issued August 22, 2002 on the Missoula County Payroll Fund in the amount of \$129.42 (for Fair payroll), which cannot be found.

Replacement Warrant – Chairman Carey examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Leslie McClintock as applicant for Accounting Warrant #18759, issued February 25, 2003 on the Missoula County 2250 Fund in the amount of \$29.05 (for Express Mail reimbursement). No bond of indemnity is required.

Replacement Warrant – Chairman Carey examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Target, Minneapolis, MN, as applicant for Accounting Warrant #10645, issued August 23, 2002 on the Missoula County 2301 Fund in the amount of \$48.21 (for supplies). No bond of indemnity is required.

**ADMINISTRATIVE MEETING**

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

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 21 - Pay Date: October 17, 2003. Total Missoula County Payroll: \$876,667.96. The Transmittal Sheet was returned to the Auditor's Office.

Letter – The Commissioners signed a letter, dated October 21, 2003 to First Interstate Bank Credit Card Department, Billings, Montana, asking them to change the name on a Mastercard account from Susan Reed (former Auditor) to Barbara Berens, the new Missoula County Auditor.

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Resolution No. 2003-112 – The Commissioners signed Resolution No. 2003-112, dated October 21, 2003, a Budget Amendment for the Office of Planning and Grants, reflecting a revenue description of \$350.00 for the EPA East Missoula Sewer Grant. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Resolution No. 2003-113 – The Commissioners signed Resolution No. 2003-113, dated October 21, 2003, a Budget Amendment for the Office of Planning and Grants, reflecting a revenue description of \$60,000 for the Mentoring Children of Prisoners Program. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

MOU – Commissioner Curtiss signed a Memorandum of Understanding (“MOU”) between the Montana Department of Public Health and Human Services (“DPHHS”) and the Interim Assistance Providers Coalition (“IAP”) so that IAP may act as the state agent for the Supplemental Security Income Interim Assistance Reimbursement Program for Fiscal Year 2004. There is no state or federal fiscal compensation for any SSI-IAR services provided under this MOU. The MOU will remain in full force and effect for the grant period of October 1, 2003 through September 30, 2004. All other terms and conditions are set forth therein. The document was forwarded to Linda Currie at DPHHS in Helena.

Resolution No. 2003-111 – The Commissioners signed Resolution No. 2003-111, dated October 21, 2003, accepting property from Kevin and Theresa Finnegan for an easement for an additional right-of-way for the Keil Loop and I-90 Connection. The property is located in a portion of the SW¼ of Section 36, T 14 N, R 20 W, PMM, Missoula County.

Permit – A Missoula County Encroachment Permit was signed by the Commissioners and Kevin and Theresa Finnegan relating to a plastic rail fence that was discovered when preparing the easement for the Keil Loop and I-90 Connection (see previous journal entry).

Agreement – Chairman Carey signed a Montana National Fire Plan Grant Agreement (#FD-04-003), which is awarded by the USDA Forest Service and administered by the Montana Department of Natural Resources and Conservation. The Missoula County Park Board will receive \$775.00 for the Mockingbird Fuel Reduction/Forest Rehabilitation project completed the week of October 13, 2003 in the Mockingbird County Park. The document was returned to Lisa Moisey, Parks Coordinator, for further signatures and handling.

Contracts – The Commissioners signed two (2) Professional Services Contracts between Missoula County and Lower Construction for the following:

- 1) Contract to repair exterior of the Youth Court Building, including replacement and painting of the balcony on the west side of the building, in an amount not to exceed \$35,000; and
- 2) Contract to repair and paint exterior of the Public Defenders Building, including foundation repair and bricks replaced on the southeast corner of the building, in an amount not to exceed \$33,000.

The term of both contracts is October 20, 2003 through May 31, 2004.

Agreement – The Commissioners signed an Agreement, dated October 21, 2003 between Missoula County and the Missoula Parks and Recreation Department for general grounds maintenance at the County Courthouse and certain nearby County buildings. The total amount shall not exceed \$24,362.00. The scope of services is set forth therein. The term will be Fiscal Year 2003-2004 (July 1, 2003 through June 30, 2004). The document was forwarded to the City of Missoula for signatures and return.

Agreement – The Commissioners signed two (2) Memorandums of Agreement between Missoula County and the following agencies for the continued provision of their services in Missoula County:

- 1) Agreement with the Lolo Community Council for the advancement and promotion of the interests and welfare of the residents of the Lolo community, in the amount of \$1,000; and
- 2) Agreement with the Human Resource Council/SSIT for basic needs assistance for indigent residents of Missoula County, in the amount of \$196,500.

The term for both agreements will be July 1, 2003 through June 30, 2004. All other terms and conditions are set forth therein.

Agreement – The Commissioners signed one (1) Sanitary Sewer Grant Program Agreement for Full Assistance to Owner-Occupied Households Secured by Real Property, dated October 14, 2003, with Michael and Geoffrey Birnbaum, 800 Speedway Avenue, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. All sewer development fees and on-site connection costs and fees are as set forth therein.

Resolution No. 2003-114 – The Commissioners signed Resolution No. 2003-114, abating and refunding \$33.00 in taxes on County Park property that were assessed to and collected from landowner Anne Maclay in error by the Department of Revenue. The tax bills for 1999, a portion of 2001, 2002 and 2003 for Highwood Addition – Park (3,758 sq. ft.) were abated because the parcel was donated as parkland.

Agreement – Chairman Carey signed an Agreement between Missoula County and Paradigm v2.0 Architects, P.C. for the new siding package, including ceiling insulation and fire sprinkler system, for the Ice Rink Renovation Project (Phase 1B). The Contract Sum shall be \$138,614.00, subject to additions and deductions as provided in the Contract Documents. The date of commencement and substantial completion are set forth therein. The document was returned to Doreen Culver, Bidding Officer, for further handling.

Shoreline Permits – At their October 21, 2003 Planning Status meeting with the Office of Planning and Grants, the Commissioners approved and Chairman Carey signed two (2) Shoreline Construction Permits, as follows:

- 1) Application by Jennifer Rohrer to replace and deepen an existing water line in Seeley Lake in order to prevent freezing. The Department of Natural Resources has approved the work, as the property is located on state lease land and legally described as Improvements on State Land Lot 1, Section 4, T 16 N, R 15 W, PMM; and
- 2) Application by Mildred Walters to repair an existing dock, remove a retaining wall, and install a water pump on Seeley Lake on property legally described Lot 13, Seeley Lake Shoresites, Section 3, T 16 N, R 15 W, PMM.

The documents were returned to Nancy Heil in the Office of Planning and Grants for further handling.

Letters – The Commissioners approved and signed two (2) Letters of Agreement, dated October 21, 2003, between Missoula County (Employer) and 1) Senior Management Group (Ann Mary Dussault, Jane Ellis, Dale Bickell, Steve Johnson, Jim Dolezal and Greg Robertson) and 2) Hal Luttschwager (Employee). The Letters set forth new language that replaces obsolete language (because of legislative changes regarding compensation) contained in individual employment agreements, as set forth therein.

Signature Page – The Commissioners reviewed and signed one (1) Claims Signature Page for the Larchmont Golf Course Accounts Payable Invoice Register dated October 16, 2003, in the amount of \$16,485.76. The Signature Page was returned to the County Auditor.

Other items included:

- 1) Commissioner Curtiss provided an update on meetings held regarding the formation of a Regional Development Corporation (per HB 76). The BCC agreed that Commissioner Curtiss should call the Ravalli, Mineral and Sanders County Commissioners and invite them to join Missoula County.
- 2) The Commissioners agreed to cancel the Weekly Public Meetings scheduled for November 26<sup>th</sup> (the day before Thanksgiving); December 24<sup>th</sup> (Christmas Eve); and December 31<sup>st</sup> (New Year's Eve).

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

#### **WEDNESDAY, OCTOBER 22, 2003**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Curtiss was in Miles City attending a MACo Health & Human Services Committee Meeting.

Claims Lists – Commissioners Carey and Evans signed three (3) Claims Lists, dated October 21, 2003, with the following grand totals:

- 1) \$14,870.02;
- 2) \$100,995.48; and
- 3) \$7,146.64.

The Claims Lists were returned to the Accounting Department.

Claims List – Commissioners Carey and Evans signed the Claims List, dated October 22, 2003, with a grand total of \$122,594.80. The Claims List was returned to the Accounting Department.

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Valley Landscaping Inc. for the construction of an irrigation system and landscaping at the Animal Shelter, as specified in Addendum No. 1, September 26, 2003 and Landscaping Addendum No. 2, September 29, 2003. The total amount of the contract is \$28,707.00. All other terms and conditions are set forth therein. The contract was returned to Jim Carlson at the Health Department for further signatures and handling.

PILT Assessment – The Commissioners reviewed an invoice from the Montana Association of Counties ("MACo"), dated October 14, 2003, reflecting the supplemental dues assessment for P.I.L.T., as adopted by the MACo membership at the Annual Conference in Lewistown. The invoice amount represents 1/10 of 1% of Missoula County's 2002 PILT payment, in the amount of \$740.00. The BCC will request funds from CFO Dale Bickell to pay this assessment.

#### **PUBLIC MEETING – October 22, 2003**

The Public Meeting was called to order at 1:30 p.m. by Chairman Bill Carey. Also present were Commissioner Barbara Evans and Deputy County Attorney Colleen Dowdall. Commissioner Jean Curtiss was attending the MACo Health and Human Services Committee Meeting in Miles City, Montana.

#### **Pledge of Allegiance**

#### **Public Comment**

Greg Martinsen stated that he was speaking today in his capacity as member of the Board of Supervisors for the Missoula Conservation District. As an aftermath of the Black Mountain Fire, several of the private landowners in the O'Brien Creek, Lion Gulch and Cedar Ridge areas have asked for assistance in efforts to recover from the fire. The main items they are requesting help with are seeding, culvert replacement and road work to prevent problems with run-off and erosion. The Natural Resource and Conservation Service has Emergency Watershed Protection (EWP) funds available. The Conservation District will sponsor these landowners for grants to receive EWP assistance. However, these people don't have a lot of funds and they will be responsible for 25% of the money themselves. His purpose today is to let the

Board know that these landowners may be asking the Board of County Commissioners to create an RSID in that area to cover their 25% of the funding. The entire project is estimated to be \$110,000.

Commissioner Evans asked if an RSID for this type of assistance had ever been done before.

Marnie McClain stated that she did not know if one had been done before, but it is an option available for these people.

Greg Martinsen stated the entire project should cost approximately \$110,000. Some landowners will be looking for more money than others depending on the amount of damage sustained in the fire. Some may not need seeding, but their road is affected, which will require some culvert replacement. The Conservation District just wanted to let the Board of County Commissioners know that this request may be coming before them.

**Routine Administrative Actions**

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$405,293.69. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

**Hearing (Certificate of Survey): Farra 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 as a tract of land located in the northeast one-quarter of the southeast one-quarter of Section 31, Township 14 North, Range 20 West, P.M.M., Missoula County, Montana.

Leroy and Shirley Farra have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately four acres in size located near Missoula, Montana, a remainder of the Primrose Subdivision, located off Mullan Road near Mallard Way and Primrose Drive. Leroy and Shirley Farra propose to create one approximately two acre parcel for transfer to their daughter, Brenda Lee Farra, for residential purposes and keep the remaining approximately two acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
Deeded Parcel	Pre-1974		Clarence Mann	
Deeded Parcel	1991		Clarence Mann	Gerald and Janice Scharberg
Deeded Parcel	1991		Gerald and Janice Scharberg	Michael and Robyn Murphy
Deeded Parcel	1992		Michael and Robyn Murphy	V. Leroy and Shirley Farra

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

Shirley and Leroy Farra were present and came forward to answer any questions the Board may have.

Chairman Carey stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. He asked Mr. and Mrs. Farra if they were going to transfer this land to their daughter.

Shirley and Leroy Farra stated that was their intention, it is not an attempt to evade subdivision regulations.

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

Commissioner Evans moved that the Board of County Commissioners approve the request by Leroy and Shirley Farra to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Chairman Carey stated that Mr. and Mrs. Farra would receive a letter of approval within a week or two. All necessary permits and other requirements will need to be obtained to build on the land. The approval today is only for the division of land; it does not guarantee access or services, nor does it grant Health Department, zoning or planning approval.

**Hearing (Certificate of Survey): Anderson 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 as COS 3547, located in the northwest quarter and northeast quarter of Section 29, Township 17 North, Range 15 West, P.M.M., Missoula County, Montana.

Leon R. Anderson has submitted a request to create three additional parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 20 acres in size, located near Seeley Lake, Montana. Leon Anderson proposes to create one 5-acre parcel for transfer to his daughter, Vanessa J. Garben, for residential purposes; one 5-acre parcel for transfer to his daughter, Audrey J. Sesma, for residential purposes; and one 5-

acre parcel for transfer to his daughter, Lavonne E. McComb, for residential purposes. Mr. Anderson will keep the remaining approximately 5-acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
Deeded Parcel	1988		Robert W. Riley	Leon R. Anderson

Leon Anderson was present and came forward to answer any questions the Board may have.

Chairman Carey stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. He asked Mr. Anderson if he was going to transfer this land to his daughters.

Leon Anderson stated that was his intention, it is not an attempt to evade subdivision regulations.

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

Commissioner Evans moved that the Board of County Commissioners approve the request by Leon Anderson to create three 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.

Chairman Carey stated that Mr. Anderson would receive a letter of approval within a week or two. All necessary permits and other requirements will need to be obtained to build on the land. The approval today is only for the division of land; it does not guarantee access or services, nor does it grant Health Department, zoning or planning approval.

**Hearing (Certificate of Survey): Revocation of Agricultural Exemption (Gregory MacDonald)**

Chairman Carey opened the public hearing.

Colleen Dowdall presented the staff report.

This is a consideration of a request to remove the agriculture exemption covenant that exists on Tract 1B of COS 5323, located in the southwest one-quarter of Section 5, Township 12 North, Range 19 West.

Gregory C. MacDonald has submitted a request to remove the agriculture exemption covenant that exists on Tract 1B of COS 5323. The current parcel is approximately 7.43 acres in size, located near Missoula, Montana, in an unannexed area near 55th Street. Mr. MacDonald proposes to remove the agriculture exemption covenant that exists for the following reasons:

1. The parcel is no longer large enough to sustain animals for grazing purposes for any substantial length of time.
2. Tract 1 and 2 of COS 1152 are wholly surrounded by the City of Missoula.
3. The zoning adjacent to Tract 1B is as follows: a) City of Missoula RR1 to the north and west; b) City of Missoula RLD4 to the south; and c) County RR3 to the east. All of these zoning districts allow medium to high density residential uses.
4. This parcel is included in the City of Missoula 1999 Sewer Service Area.
5. Tract B is shown on the City of Missoula Growth Management Area for residential use.

The history of the parcel is as follows:

- Certificate of Survey 1152 was filed in May of 1977, creating two 10-acre tracts with agricultural covenants.
- The agricultural exemption on Tract 2 of COS 1152 was removed by the County Commissioners on October 8, 1992 per Resolution 92-086.
- A single family residence was constructed on Tract 2 of COS 1152 shortly thereafter.
- Tract 1 was divided in September of 2002 by Marsha Frye and Gregory C. MacDonald as Tract 1A and Tract 1B.
- Tract 1A was then transferred by court order to Marsha Frye.

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act, except as listed below:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 4322	1999	Boundary Relocation	Gregory MacDonald	
COS 4371	1999	Boundary Relocation Retracement	Gregory MacDonald	
COS 4547	1999	Mortgage Remainder	Gregory MacDonald	
COS 5323	2000	Court Order	Gregory MacDonald	

Jim Weatherly, WGM Group, representing Greg MacDonald, presented a vicinity drawing of the parcel in question. Greg MacDonald and his partners purchased this property in 1978 when it had the Agricultural Exemption on it and they have held it for the past 25 years, along with a lot of other property in this area, part of which has been subdivided and part of which has not. This was purchased originally because it was immediately above Mr. Kimbel's (Mr. MacDonald's partner) land and was meant to buffer the house against development. The 10 acres has been leased and used as pasture land for the past 25 years. A year ago, there was a court ordered division of the land which created a 2.68 acre parcel which was transferred to Mr. Kimbel's ex-wife, again to serve as a buffer for the house she now occupies. Mr. MacDonald ended up with the 7.43 acre remainder parcel. The taxes on this piece of property will be over \$1,300 next year so it is no economically feasible to rent it out as pasture land and the marginal size makes it unusable as pasture land. The land is surrounded by the City of Missoula except on the east side. Zoning on this and adjacent parcels in both the City and County are residential, medium to high density. The parcel is also included in the City's Sewer Service Area and shown in

the Growth Management Area for residential use. As it is really not viable for agricultural use, Mr. MacDonald would like to remove the covenant as this time and pursue selling the parcel.

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

Commissioner Evans moved that the Board of County Commissioners approve the request by Gregory C. MacDonald to remove the agriculture exemption covenant 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.

There being no further business to come before the Board, the Commissioners were in recess at 1:45 p.m.

**THURSDAY, OCTOBER 23, 2003**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was out of the office all day on October 23<sup>rd</sup> and 24<sup>th</sup>.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated October 21, 2003, with a grand total of \$9,082.88. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Contract – The Commissioners signed a Professional Services Contract between the Missoula County Workers' Compensation Authority ("WCA") and Heidi Goldman to meet with employer members of the WCA, conduct a loss control assessment and provide written reports with recommendations to Hal Luttschwager, Risk Manager. The total amount shall not exceed \$10,000. The term will be November 3, 2003 through June 30, 2004.

Contract – The Commissioners signed a Professional Services Contract between the Western Montana Fair and IMAGE for numerous tasks deemed relevant to the successful marketing, advertising and promotion of the Fair, as set forth therein. The total amount shall not exceed \$7,500. The term will be September 1, 2003 through September 1, 2004. The document was returned to Scot Meader at the Fairgrounds for further signatures and handling.

Agreement – The Commissioners signed one (1) Sanitary Sewer Grant Program Agreement for Full Assistance to Owner-Occupied Households Secured by Real Property, dated September 4, 2003, with Keri C. McDonald, 629 Minnesota Avenue, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. All sewer development fees and on-site connection costs and fees are as set forth therein.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-008 for the Health Department, in the amount of \$15.00, reflecting a needed object code.

Contract – Chairman Carey signed a Contract for Services, dated June 19, 2003 between Missoula County (representing Missoula, Mineral and Ravalli Counties) and Land and Water Consulting for the development of approved multi-jurisdictional All Hazards Pre-Disaster Mitigation Program Plans ("PDM"). The PDM is new to FEMA and will eventually provide grant money for mitigation projects. Missoula County will be the lead county for this project. The grant to the three counties is \$30,000, and requires a 25% match. All PDM plans shall be completed by March 23, 2004. The document was returned to Jane Ellis in DES for further signatures and handling.

Other items included:

- 1) A discussion was held regarding zoning issues and setbacks related thereto.

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

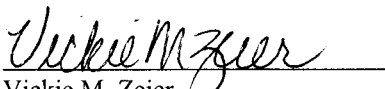
**FRIDAY, OCTOBER 24, 2003**

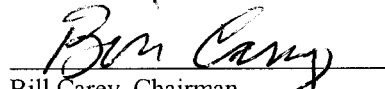
The Board of County Commissioners met in regular session; a quorum of members was present in the forenoon. Commissioners Carey and Curtiss were out of the office all afternoon.

Claims Lists – Commissioners Carey and Curtiss signed two (2) Claims Lists, dated October 23, 2003, with the following grand totals:

- 1) \$71,715.47; and
- 2) \$88,741.81.

The Claims Lists were returned to the Accounting Department.

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

**MONDAY, OCTOBER 27, 2003**

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

Claims List – The Commissioners signed the Claims List, dated October 22, 2003, with a grand total of \$46,455.75. The Claims List was returned to the Accounting Department.



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Claims Lists – The Commissioners signed two (2) Claims Lists, dated October 24, 2003, with the following grand totals:

- 1) \$39,264.58; and
- 2) \$1,963.23.

The Claims Lists were returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated October 27, 2003, with a grand total of \$23,155.84. The Claims List was returned to the Accounting Department.

Plat and Agreement – The Commissioners signed the Plat and Development Agreement for Double 'R' Acres, Block 1, Lot 4, located in the NE¼ of Section 26, T 13 N, R 20 W, PMM, Missoula County, a total gross and net area of 2.20 acres, with the owners of record being Richard C. and Sara F. Burlingame. The Development Agreement, dated October 6, 2003, relates to weed control and radon mitigation, as set forth therein.

Indemnity Bond – Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Adriane Miller, Frenchtown, Montana, as Principal for Accounting Warrant #278812, issued September 5, 2003 on the Missoula County Payroll Fund in the amount of \$394.20 (for wages), which cannot be found.

Operating Plan – The Commissioners met with Jennifer Carter, Director of the State Office of Public Assistance, and reviewed and signed the Community Operating Plan and Annual Agreement for Missoula County for 2004.

#### TUESDAY, OCTOBER 28, 2003

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

Claims List – The Commissioners signed the Claims List, dated October 28, 2003, with a grand total of \$45,729.39. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

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

Change Order – Chairman Carey signed Change Order #5 to the contract, dated July 10, 2003 between Missoula County and A&E Architects and Hydro-Tech, Inc. for the exterior restoration project of the Missoula County Courthouse. Forty-seven additional patches were needed on the north elevation, in a supplementary amount of \$5,925.00. The new Contract sum (including this Change Order) will be \$242,625.00. The Date of Substantial Completion is unchanged. The document was returned to Doreen Culver, Bidding Officer, for further handling.

Agreement – The Commissioners signed one (1) Sanitary Sewer Grant Program Agreement for Full Assistance to Owner-Occupied Households Secured by Real Property, dated October 20, 2003, with Penny J. (Buckels) Spencer, 516 Iowa, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. All sewer development fees and on-site connection costs and fees are as set forth therein.

Agreement – The Commissioners signed a Memorandum of Agreement between Missoula County and the Missoula YWCA for services as set forth in the Rural Domestic Violence Program, which was awarded supplemental funding by the Office of Violence Against Women of the Office of Justice Programs for the period October 1, 1996 to June 30, 2005. This contract is for the July 1, 2003 through June 30, 2005 grant period. The total amount awarded for this two-year grant period is \$399,978 (the total continuation award since 1996 is \$1,276,303. All other terms and conditions are set forth therein.

Contract – Chairman Carey signed a contract between Missoula County and the Montana State Department of Public Health and Human Services Contract (#20043DMVL0014) for continuation funding for the Domestic Violence Program (YWCA Shelter Grant). The total amount shall not exceed \$55,000.00. The term will be October 1, 2003 through June 30, 2004. All other terms and conditions are set forth therein. The document was returned to Leslie McClintock in the Office of Planning and Grants for further handling.

Letter – Chairman Carey signed a letter, dated October 30, 2003, to Karen Joyce-McMahon, Office on Violence Against Women ("OVAW"), Washington, D.C., confirming that Kristina Swanson at the Office of Planning and Grants is Missoula County's Project Director for the OVAW Safe Havens Grant #2002-CW-BX-0009 (a YWCA \$120,000 two-year grant for a supervised visitation project). The letter was returned to Kristina Swanson at OPG for further handling.

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

#### WEDNESDAY, OCTOBER 29, 2003

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

Claims List – The Commissioners signed the Claims List, dated October 24, 2003, with a grand total of \$73,511.13. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated October 27, 2003, with a grand total of \$2,662.21. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated October 28, 2003, with a grand total of \$34,107.13. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated October 29, 2003, with the following grand totals:

- 1) \$10,022.15; and
- 2) \$867.41.

The Claims Lists were returned to the Accounting Department.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

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

Indemnity Bond – Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Kate Kool as Principal for Hellgate Elementary Warrant #25011, issued October 20, 2003 on the Missoula County Payroll Fund in the amount of \$205.73 (for wages), which was destroyed.

Agreements – The Commissioners signed two (2) Memorandums of Agreement between Missoula County and the YWCA of Missoula for the following:

- 1) Agreement for continuation of comprehensive services for victims of domestic violence in accordance with DPHHS Contract #20043DMVL0014 (YWCA Shelter Grant), in the amount of \$55,000. The term will be October 1, 2003 through June 30, 2004; and
- 2) Agreement for continuation of services for victims of domestic violence through support for the Jesuit Volunteer Program, in the amount of \$18,000. The term will be July 1, 2003 through June 30, 2004

All other terms and conditions are set forth therein.

Task Order – Chairman Carey signed Task Order No. 04-07-04-11-002-0 to the Missoula City-County Government Master Contract between the Montana Department of Public Health and Human Services and the Missoula City-County Health Department for the provision of supplemental funding for the Antimicrobial Resistance Prevention Program. The total amount of this Task Order shall not exceed \$40,009.00. The term will be July 1, 2003 through June 30, 2004 (with the exception of the final report due August 15, 2004.). The document was returned to the Health Department for further signatures and handling.

Other items included:

- 1) The Commissioners reviewed and approved the draft By-Laws of the Board of Trustees, Historical Museum at Fort Missoula.

#### PUBLIC MEETING – October 29, 2003

The Public Meeting was called to order at 1:30 p.m. by Chairman Bill Carey. Also present were Commissioner Barbara Evans, Commissioner Jean Curtiss, Chief Civil Deputy County Attorney Mike Sehestedt, Chief Administrative Officer Ann Mary Dussault, Chief Financial Officer Dale Bickell and Director of the Fairground Scot Meader.

#### Pledge of Allegiance

#### Public Comment

None.

#### Routine Administrative Actions

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$569,873.78. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

#### Hearing: Proposal to Issue Bonds for Ice Rink Improvements and Expansion at the Fairgrounds

Chairman Carey opened the public hearing.

Scot Meader presented the staff report. He also recognized three members of the Fair Board, Kim Latreille, Charlie Deschamps and Betty Jo Johnson. He thanked the Commissioners, staff and MAYHA for their effort toward this proposal. This request would finance the expansion of the existing Hockey Rink – enclosing it, adding restroom facilities, locker rooms, a cafeteria, insulation and a sprinkler package. Phase I is enclosing the existing structure and installing a sprinkler system to bring the building up to code. Phase IA would be the expansion of the mechanical room, the locker rooms and the restroom facility.

Dale Bickell stated under this project, the Ice Rink remains the property of Missoula County Fairgrounds. In order to finance the project, the County intends to issue \$950,000 in General Fund Obligation Bonds with an estimated annual debt service of approximately \$70,000. The debt service payments will be made from lease payment from MAYHA. The lease and Memorandum of Understanding were signed by the Commissioners in August, 2003. The first 2,000 hours of ice rental will be paid directly for debt service. Any excess hours beyond 2,000, which is expected to be between 300 and 500 hours, will be paid at a lower rate and provide a cushion for ongoing maintenance of the building.

Mike Sehestedt stated that under the lease agreement, the use of the building is exclusive to MAYHA, except for the month of the Western Montana Fair. The Fair get a building for their busy time and the remaining time the building will hopefully be filled with happy skaters.

Commissioner Curtiss asked Dale to explain why bonds were being used instead of an Intercap Loan.

Dale Bickell stated that when this project was initially discussed, the first option for financing was using the State Board of Investments Intercap Loan program. After discussions with them and Bond Counsel, it was felt that this would be the best option. An Intercap Loan is easy to apply for and although rates are variable, they are usually low. However, in the later stages of the project, it was discovered that Intercap was unwilling to loan on the terms needed for this type of project. Other options were either commercial lending or issuing formal bonds. After looking at interest rates, it was determined that bonds would be the best deal. In the long run, it will be better for everyone, with a fixed interest rate of approximately 4 percent. Bonds have more administrative issues initially, but in the long term will be a better financing instrument.

Skip Higgins stated he represented the Missoula Area Youth Hockey Association (MAYHA). The organization is made up of about 750 children and adults. MAYHA manages the ice rink from November 1st through the end of April with carryover time before and after to set up and take down the rink. They are in support of this request. The members had asked the Association to either find or build a facility that provides indoor ice and more ice time for users. This project answers both of those needs for their users. Under the terms of the lease, they will manage the rink for 11 months of the year. During fair month, they will take down the rink, set up for Fair Week use, then set up the ice rink again. They also sell ice to the Missoula Figure Skating Club, the Women's Hockey Association of Missoula and the general public. Although MAYHA is a private, non-profit association, they manage the rink with the best interest of Missoula County in mind and plan to do so in the future. They have worked for 8-12 months to find a facility. At one point, they thought they might have to build a facility off the fairgrounds, but thanks to the interest and efforts of the County, the Fair Board and Scot, in particular, this project was developed. They have a great relationship with the Fair at the existing facility. Financially, this presents a better opportunity for long term skating for their users. This will be good for the County as it will take the facility from a seasonal, part time operation to a full time operation with full time employees, creating jobs for Missoula citizens. MAYHA hosts youth and adult hockey tournaments. Figure skaters will be able to hold more events. Consequently, restaurants and hotels in the area will benefit. They also directly benefit the fair by contributing some revenue during their off season. Last year that payment was between \$30,000 and \$40,000. It is reasonable to assume those payments will go up with a year round facility.

Chairman Carey asked what the hours of operation would be.

Skip Higgins stated they would probably be open from 5:00 a.m. to 1:00 a.m. So far, they haven't found anyone to work the graveyard shift. They had such an increase this year in adult and youth hockey, they had to fit some more teams in. They have pre-sold more ice this year by 100-200 hours, compared to last year. Last year they sold roughly 1,900 hours in total and they have already pre-sold that many hours this year. They expect to sell another 300-400 hours above that this year. The total available hours at the existing facility is about 2,700 hours. They are currently at the limit of what they can sell, which is one of the biggest reasons to enclose the rink. It will allow the season to be extended and take up some of the slack that exists.

Commissioner Curtiss stated that the County is obligated to pay this debt service if MAYHA does not. Do they feel this is a fad that will go away before the 20 years is up.

Skip Higgins stated he did not think so. They started with about 60 children and 40 adults in 1996. Now they are maxed out at 350 children and 400 adults, just in MAYHA and the Glacier Hockey League. The women's league added about 20 new players this year for a total of 100+ members. In 7 years, they have gone from 150 members to 750 members and there is no reason to think that will stop. The rate might slow down, but the interest won't go away. They would not have any trouble making the payments with their current membership. Hockey is a growing sport in the community. As long as they continue to listen to their users, there is no reason to think hockey or skating will fade away.

Jill Dunn stated she was representing the Missoula Figure Skating Club. She has been involved with figure skating in Missoula for many years. She remembers going before the City Council in 1990 trying to get an ice rink at McCormick Park. She echoed Skip's comments and felt all the user groups were excited about the possibility of a much needed indoor facility and second ice surface. It is the hours of ice time that is important. As Skip said, the rink is only shut down for 4 hours a day. It has been possible to expand the adult programs because adults are more willing to be up at late hours. The Skating Club is mostly children and the hours for their participation are limited. The figure skating club rents 8-1/2 hours from Glacier Ice Rink or MAYHA per week. The organization has grown from 15 members in 1997 to 75 members now, which doesn't include the people who are in the basic learn to skate programs. There are approximately 220 people involved in the learn to skate program every season. The Central Park committee has been looking at the Fairgrounds. The Missoula Redevelopment Agency just hosted a panel from the Urban Land Institute to do planning for the area. It is exciting to be a part of this project, the expansion of the ice rink is just the first step in a huge economic endeavor in the area.

Dave Dickson stated he is the public skating representative for MAYHA. When he first moved to Missoula 23 years ago, he would try to find ice somewhere in the winter, such as under the Reserve Street bridge. At that time if someone knew how to skate, they usually weren't from Missoula. That has changed, there are hundreds of children and many adults who have learned to skate and are involved in hockey. It is wonderful to see that happen. If the expansion goes forward, that will only increase. Public use will continue to grow. The rink is at its maximum for renting ice time. By increasing the availability of ice, more people can be involved.

Karen Wilson stated she was the president elect of the Women's Hockey Association of Missoula. Currently, there are 94 members in the organization. They were able to expand this year because they added another team and added more players to each team, but that forces each team to take a bye one week because there is not enough ice time to increase the league's playing time. The interest is great, but it means each time actually has less ice time. This is not a fad that will come and go. The Association started with about 46 members and it has doubled in size in just a couple of years. There are other user groups, such as from the University of Montana, that also use this ice, so in addition to those present today,

there are others that will benefit. There is a lot of interest in Missoula in skating and it will help revitalize interest in the fairgrounds area.

Steve Schwartz stated that he was representing the Hockey Dads of Missoula. His son has played hockey since he was 6 years old. He would love to play more but is limited by ice time and money. There were some ideas for additional hockey events last season that couldn't happen because of the limited ice time. His son has traveled to other towns in Montana for hockey events. All the communities in Montana that have hockey facilities, with the exception of White Fish, are better than what Missoula has. It is embarrassing to the parents. Parents from other communities have told him they hate coming to Missoula because of the facilities. There won't be any ice in Missoula until the end of this week at the earliest, but in Helena, kids were skating in September. Helena, Great Falls, Butte, Billings, even Sydney, have better facilities than Missoula. That's embarrassing. The interest is there and the kids have a great time.

Commissioner Evans asked if there was anyone in the audience who did not want the Board to approve issuing these bonds? She stated for the record that no one raised their hand.

Ann Mary Dussault stated she received a call from Martha Newell who would like to go on record in support of this project. Martha also challenged her to become a member of the Women's Hockey Association. She is, in turn, issuing a challenge to Commissioner Evans and Commissioner Curtiss; if they join, so will she.

Commissioner Evans stated that this was a perfect example of what government and the community can do together. Everyone involved is to be commended for their efforts.

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

Commissioner Evans moved that the Board of County Commissioners approve issuing General Fund Obligation Bonds for the Missoula Area Youth Hockey Association Project on the Fairgrounds and authorize the chair to sign the resolution. Commissioner Curtiss seconded the motion.

Chairman Carey stated that he also commended everyone for their work on this project and for taking the time to attend the meeting today. As Commissioner Evans said, this is the kind of partnership between government and the public that can provide a huge service to the community.

The motion carried on a vote of 3-0.

Commissioner Curtiss stated that she would also like to commend the Fair Board for all their work in joining with the community to make this project a reality.

Ann Mary Dussault stated that she would like to recognize Scot Meader and the work he has done on this project. Scot is new to Missoula as the Fair Manager and he has done simply a remarkable job in helping put this project together. She recognized Scot as one of the newest, finest members of the County's administrative team.

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

Resolution No. 2003-115 – Following the Public Meeting, the Commissioners signed Resolution No. 2003-115, dated October 29, 2003, a Resolution relating to General Fund Obligation Bonds (Missoula Area Youth Hockey Association Project at the Fairgrounds) of the County in an approximate aggregate principal amount not to exceed \$950,000; approving the Project and authorizing the issuance of Bonds therefore. Clerk and Recorder Vickie Zeier signed a Certificate as to Resolution and Adopting Vote.

#### THURSDAY, OCTOBER 30, 2003

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:

Indemnity Bond – Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Terry Rauk as Principal for Accounting Warrant #17500, issued January 23, 2003 on the Missoula County 1000-230 Fund in the amount of \$37.87 (for a hammer and staple gun), which was destroyed.

Agreement – Chairman Carey signed an Agreement (#2004-02-0301 & 2004-03-03-01) between the Missoula City-County Health Department and the Montana Department of Transportation for the third annual Safe Kids/Safe Communities Project, which facilitates activities to reduce injuries and fatalities resulting from traffic crashes (particularly for children being transported in child safety seats). The total amount shall not exceed \$34,481.00. The term will be ten days from the date of execution of the Agreement through September 30, 2004. All other terms and conditions are set forth therein. The document was returned to the Health Department for further handling.

Contract – Chairman Carey signed a Contract (#04-07-5-21-020-0) between the Missoula City-County Health Department and the Montana Department of Public Health and Human Services ("DPHHS") for the provision of the services of the US Department of Agriculture's Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC") to the residents of Beaverhead County(s) and possibly residents of surrounding areas. The total amount shall not exceed \$347,792.00. The term will be October 1, 2003 through September 30, 2004. All other terms and conditions are set forth therein. The document was returned to the Health Department for further signatures and handling.

Task Order – Chairman Carey signed Task Order No. 04-07-4-61-033-0 to the Missoula County Unified Government Master Contract (Public Health Emergency Preparedness and Response Program and the Communicable Disease

Control and Prevention Bureau) between the Montana Department of Public Health and Human Services and the Missoula City-County Health Department. The purpose of this Task Order is to upgrade and enhance local public health capacity to respond to emergent situations, through planning, assessment and development of critical capacities in the areas of epidemiology and surveillance, information technology, communication, training and education. The total amount of this Task Order shall not exceed \$195,115.00. The term will be September 1, 2003 through September 30, 2004. The document was returned to the Health Department for further signatures and handling.

Contract – The Commissioners signed a Professional Services Contract between the Partnership Health Center and Matt Anderson (of Community Care) for the provision of tobacco deglamorization and denormalization presentations to fifty 5<sup>th</sup> grade classrooms in Missoula County. Only employees or board members of Community Care will give presentations. The total amount shall not exceed \$3,200 (which is provided by State tobacco monies). The term will be October 29, 2003 through May 31, 2004. The document was returned to the Health Department for further signatures and handling.

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Higgins Consulting Engineers, LLC, for the provision of fueling facility inspection and sampling services to insure compliance with Subchapter 1 of the Missoula City-County Air Pollution Control regulations Rules 10.104 and 10.107 (Oxygenated fuel regulations). The total amount shall not exceed \$2,495. The term will be November 1, 2003 through February 28, 2004. The document was returned to Shannon Therriault at the Health Department for further signatures and handling.

Other items included:

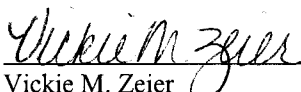
- 1) Because of Roy Kimbel's inability to serve on the Tax Appeal Board for an unknown period of time (due to recovery from a health issue), the Commissioners voted to appoint Norm Taylor to temporarily fill in for Mr. Kimbel. If Mr. Kimbel is unable or unwilling to serve, Dan Norman will be asked to fill in.

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

**FRIDAY, OCTOBER 31, 2003**

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

Resolution No. 2003-116 – The Commissioners signed Resolution No. 2003-116, dated October 31, 2003, revoking an agricultural covenant (for Gregory MacDonald) which currently exists on Tract 1B of Certificate of Survey 5323, located in the SW¼ of Section 5, T 12 N, R 19 W, as the parcel is no longer large enough to sustain animals for grazing purposes for any substantial lengths of time.

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

## MONDAY, NOVEMBER 3, 2003

The Board of County Commissioners met in regular session; a quorum of members was present in the forenoon. Commissioner Curtiss was in Helena attending a MACo Conference Planning Committee meeting. Commissioners Carey and Evans were out of the office all afternoon.

Plat – The Commissioners signed the Plat for Porter Addition, a minor subdivision located in the NE¼ of Section 13, T 12 N, R 18 W, PMM, Missoula County, a total gross area of 16.72 acres, with the owners of record being George R. and Virginia M. Porter.

Letter – The Commissioners signed a letter, dated November 3, 2003, to the State Tax Appeal Board, Helena, Montana, informing them that Norm Taylor has been temporarily reinstated as a member of the Missoula County Tax Appeal Board. Mr. Taylor will fill in for member Roy Kimble who has been hospitalized and unable to serve on the Board at this time.

## TUESDAY, NOVEMBER 4, 2003

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 Lists – Commissioners Curtiss and Evans signed two (2) Claims Lists, dated October 30, 2003, with the following grand totals:

- 1) \$5,130.74; and
- 2) \$24,922.40.

The Claims Lists were returned to the Accounting Department.

Claims List – Commissioners Curtiss and Evans signed the Claims List, dated October 31, 2003, with a grand total of \$53,938.92. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Curtiss and Evans signed three (3) Claims Lists, dated November 3, 2003, with the following grand totals:

- 1) \$109,329.66;
- 2) \$52,316.40; and
- 3) \$10,287.11.

The Claims Lists were returned to the Accounting Department.

Claims List – Commissioners Curtiss and Evans signed the Claims List, dated November 4, 2003, with a grand total of \$1,497.00. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 22 - Pay Date: October 31, 2003. Total Missoula County Payroll: \$898,716.56. The Transmittal Sheet was returned to the Auditor's Office.

Resolution No. 2003-118 – The Commissioners signed Resolution No. 2003-118, dated November 4, 2003, a Budget Amendment for the Library, reflecting Capital expenditures in the amounts of \$148,996 and \$33,000 for Library renovation expenses. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Resolution No. 2003-117 – The Commissioners signed Resolution No. 2003-117, dated November 4, 2003, a Budget Amendment for the Partnership Health Center ("PHC"), reflecting \$125,000 in revenue from a Pharmacy Collaborative Federal Grant and \$75,000 expended for contracted services for collaborative partners. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Agreements – The Commissioners signed two (2) Memorandums of Agreement between Missoula County and the following agencies for the continued provision of their services in Missoula County:

- 1) Agreement with the YWCA for basic needs assistance for indigent Displaced Homemakers, in the amount of \$5,000. The term will be July 1, 2003 through June 30, 2004; and
- 2) Agreement with Big Brothers Big Sisters, dated October 1, 2003, for mentoring services for children whose parents are incarcerated, in the amount of \$58,300. The termination date is June 30, 2004.

Agreement – The Commissioners signed one (1) Sanitary Sewer Grant Program Agreement for Full Assistance to Owner-Occupied Households Secured by Real Property, dated October 24, 2003, with Sheila A. Claxton, 738 Michigan Avenue, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. All sewer development fees and on-site connection costs and fees are as set forth therein.

Agreement – The Commissioners signed a Memorandum of Agreement between Missoula County and the Missoula Indian Center for services for alcohol and other substance abuse prevention, intervention and treatment for prioritized populations in accordance with the Missoula County Alcohol and Other Drug Treatment and Prevention Services Plan

for 2000-2004. The total amount shall not exceed \$10,223.00. The term will be July 1, 2003 through June 30, 2004. All other terms and conditions are set forth therein.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-016 for the Partnership Health Center, reflecting \$500 in fund expenditures from a donation from a drug company for pharmacy week.

Extension Request – Per recommendation of the Office of Planning and Grants staff, the Commissioners approved and signed a letter, dated November 4, 2003 to Dale Mahlum, Jellystone Park, approving his request for a three-year extension of the final plat approval deadline for Phase II of Jellystone RV Park. The new deadline will be October 26, 2006.

Other items included:

- 1) For the Commissioners' information and review, Tom McCarthy of WGM submitted a packet on the Wye Area Sewer & Public Water Infrastructure Development Project which outlines the cost of the project and needed partners to make it work, including federal grants.

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

### WEDNESDAY, NOVEMBER 5, 2003

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

Claims Lists – The Commissioners signed two (2) Claims Lists, dated November 4, 2003, with the following grand totals:

- 1) \$110,341.64; and
- 2) \$7,380.09.

The Claims Lists were returned to the Accounting Department.

Indemnity Bond – Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Zoya Yarmolich as Principal for Missoula County Public Schools Warrant #106866, issued February 8, 2002 on the MCPS Payroll Fund in the amount of \$17.21 (for wages), which cannot be found.

Monthly Report – Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Shirley E. Faust, for the month ending October 31, 2003.

Monthly Report – Chairman Carey examined, approved and ordered filed the corrected copy of the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending October 31, 2003.

Monthly Report – Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending October 31, 2003.

### CHIEF ADMINISTRATIVE OFFICER MEETING

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

Agreements – The Commissioners signed four (4) Memorandums of Agreement between Missoula County and the following agencies for the continued provision of their services in Missoula County:

- 1) Agreement with the Salvation Army/Transportation Program for assistance for indigent residents, in the amount of \$18,000. The term will be July 1, 2003 through June 30, 2004;
- 2) Agreement with the Salvation Army/Winter Shelter Program for emergency winter shelter for indigent residents, in the amount of \$20,000. The term will be July 1, 2003 through June 30, 2004;
- 3) Agreement with Missoula County Public Schools for services to increase public awareness of the activities of the Missoula Forum for Children and Youth, in the amount of \$7,000. The term will be October 1, 2003 through September 30, 2004; and
- 4) Agreement with the Seeley Lake Community Council for services to advance and promote the interests and welfare of the residents of the Seeley Lake community in Missoula County, in the amount of \$1,000. The term will be July 1, 2003 through June 30, 2004.

Request for Action – The Commissioners confirmed (with Barbara Evans abstaining) that it is the desire of the BCC that the Office of Planning and Grants complete the regional planning effort in the Seeley Lake Planning Region following substantial completion of the Wye/Mullan Regional Plan, while beginning the groundwork for planning in the Frenchtown/Huson planning region. The OPG staff will present a status report to the BCC by the end of January 2003.

### PUBLIC MEETING – November 5, 2003

The Public Meeting was called to order at 1:30 p.m. by Chairman Bill Carey. Also present were Commissioner Barbara Evans, Commissioner Jean Curtiss, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall, Airport Director John Seymour and Bond Counsel Mae Nan Ellingson.

### Pledge of Allegiance



**Public Comment**

None

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**Routine Administrative Actions**

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$375,143.96. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Hearing (Airport Authority): Re-funding Outstanding 1992 A Bonds and Continued Pledge to Certify 2 Mills as Additional Security**

Chairman Carey opened the public hearing.

This is a request to adopt a Resolution relating to the Missoula County Airport Authority's Airport Revenue Refunding Bonds, Series 2003, approving the issuance and sale thereof and related matters. The Airport desires to refund the bonds. It is the recommendation of the Airport Authority to adopt the Resolution. There will be no fiscal impact to Missoula County unless there is a default on Bond payments.

Mike Sehestedt presented a briefing on the project. The Missoula County Airport Authority has previously issued its revenue bonds with a certain level of guarantee of taxation as standby security in addition to the revenue for the bonds. This proposal is to take advantage of low interest rates and to refund those bonds. The savings are estimated to exceed \$700,000 over the remaining life of the bonds. The County is taking on no greater risk than it already has with the existing bond issue. Because debt service will be significantly less, this action can be seen as reducing the County's risk. The nature of refunding a bond issue is that new bonds will be issued. The proceeds from the sale of the new bonds will pay off the existing bond holders in accordance with the terms of the bond indenture. This is refunding in the sense that the County is paying new funding for the same indebtedness.

Mae Nan Ellingson stated this process was essentially like refunding one's house to get a better interest rate. The Resolution before the Board is very similar to the one adopted in 1992 when the County refunded the 1977 bonds, approved by the voters. New money bonds were issued to construct the improvements to the now existing airport. There are three series on bonds. One refunds the 1977 voter-approved bonds with a remaining term of 5 years, secured by an unlimited taxing pledge if the revenue of the airport were not sufficient to pay them. The 1992 bonds that are being refunding are payable in the first instance from the revenues of the airport. To the extent that those revenues, including the debt service reserve, are inadequate, they are payable from the 2 mills the County is authorized to levy for airport purposes. The purpose of the resolution today is to have the Board confirm that the County will, if requested, levy 2 mills for the airport to pay the 2003B Bonds if the revenues are inadequate. In addition, they are also issuing a third series of bonds in conjunction with the refunding which has no deficiency tax levy backing. These are new money bonds and no request has been received that they be secured by a tax levy. This does not extend or exceed any obligation the County already had. It may, in fact, lessen the obligation. The interest rate differential, by having the back up of the 2 mill levy, is worth a significant interest savings to the airport. The likelihood of the airport ever having to certify a deficiency mill levy is quite remote because in the bond covenants, they agree to keep their net revenues to charge lease payments to the airlines, to the rental agencies, to provide at least 125% coverage on their debt. The airport is currently in excess of that 125% coverage. They are generating more revenue, by 25%, than they need to pay their debt service.

Todd Snidow, RBC Dain Rauscher, stated this is, in essence, a refinancing of an existing debt. The Airport's old bonds, with interest rates of 7.5%, are being replaced with 20 year bonds with 4.3% interest. This results in a gross savings of over \$1 million over the next 20 years. Given the present value term, the amount is approximately \$588,000. It is a very good savings for the Airport Authority. Moody's Investor Services, a rating agency, gave the bonds very high marks on the strength of the backing of the bonds. If the bonds had been backed strictly by revenues, it would have cost the airport more than this was able to provide.

John Seymour thanked the Commissioners for allowing this refunding. He also appreciated Mike and Mae Nan's comments about the County's risk, it is lower since the refunding is being done at a better interest rate. He also reiterated that the Airport has no intention of certifying the millage as they have more than enough revenues to cover the debt service of the bonds.

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

Commissioner Evans moved that the Board of County Commissioners adopt the Resolution relating to the Missoula County Airport Authority Revenue Refunding Bonds, Series 2003, approving the issuance and sale thereof and related matters. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

John Seymour introduced the Airport's Business Development Manager, Paddy Fleming, to the Board of County Commissioners. Mr. Fleming came on board about a week ago and he will be working on the development of the airport's newly purchased property.

**Hearing (Certificate of Survey): Tucker 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 as Tract 2A of COS 5352 located in Section 15, Township 14 North, Range 20 West.

Wallace A. Tucker has submitted a request to create two parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 24 acres in size, located east of Highway 93, north of the intersection with Interstate 90. Mr. Tucker proposes to create one nine-acre parcel for transfer to his daughter, LaRae T. Glessner, for residential purpose; create one six-acre parcel for transfer to his son, Ronald A. Tucker, for residential purposes; and keep the remaining approximately nine-acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
Deeded Parcel	1966		Kenneth and Lena Richardson	Wallace Tucker

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act except as listed below:

- ❖ August 16, 2001, Wallace Tucker, Family Transfer, COS 5184, Diane Lake, daughter
- ❖ December 11, 2001, Wallace Tucker, Family Transfer, COS 5352, Stephen Tucker, son

Wally Tucker was present and came forward to answer any questions the Board may have.

Chairman Carey stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. He asked Mr. Tucker if he was going to transfer this land to his children.

Wally Tucker stated that was his intention, it is not an attempt to evade subdivision regulations. He has divided the parcel before to give property to his other children. There is a section in his will that states that each parcel cannot be transferred or sold until his death. Even after his death, if an inheritor wants to sell a parcel, the immediate family members have the first right of refusal.

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

Commissioner Evans moved that the Board of County Commissioners approve the request by Wallace A. Tucker to create two parcels by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Chairman Carey stated that Mr. Tucker would receive a letter of approval within a week or two. All necessary permits and other requirements will need to be obtained to build on the land. The approval today is only for the division of land; it does not guarantee access or services, nor does it grant Health Department, zoning or planning approval.

Commissioner Curtiss stated that there was a group of students in the audience and asked if Colleen Dowdall, Deputy County Attorney, would explain the family transfer exemption.

Colleen Dowdall stated that most divisions of land have to undergo subdivision review but Montana allows for exemptions from that review to transfer parcels to family members. Everyone is allowed to transfer one parcel to one family member per county. Mr. Tucker was asked if he had any more children on his application. He has transferred property to all his children. There are no other restrictions except that when the survey is done, the property be actually transferred to the recipient.

Commissioner Curtiss stated the exemption may go up one generation or down one generation, so that property may be transferred to a parent or a child; or a spouse.

**Hearing: Stillwaters on the Clark Fork #2 (20 lots) – Kona Ranch Road and Mullan Road**

Chairman Carey opened the public hearing.

Jackie Corday, Office of Planning and Grants, presented the staff report.

Yellow Stone Fly, LLC, represented by Nick Kaufman of WGM Group, is requesting approval of Stillwaters on the Clark Fork No. 2 Subdivision, a proposal to subdivide a 46 acre parcel into 20 lots that vary in size from 1 to 5 acres. The property is located off Kona Ranch Road near the intersection of Mullan Road, approximately 5 miles west of Reserve Street. The proposed access will be via a new road, Royal Coachman Drive, that will connect directly to Kona Ranch Road.

The land is currently a vacant field that has been used for agricultural purposes for a long time. The surrounding land uses range from agriculture and large tract residential to smaller lots. El Mar Estates is located approximately one-quarter mile to the southeast.

The applicant also owns 61 acres to the south and has submitted a master plan that shows how the entire parcel will be developed in the future. In August, 2003, the Commissioners approved a 5 lot minor subdivision that represents the northwest corner of the property, Lots 1 through 5. Stillwaters No. 2 will be Lots 1 through 20, for a total of 25 lots on approximately 64 acres, which represents an overall density of one dwelling unit per 2.6 acres. All of the property is zoned C-RR1, which allows one dwelling unit per acre. The master plan shows a loop road that will go through the property to the south to join the entire 124 acres.

There are two variances being requested, which were also requested and approved with Stillwaters No. 1. The first one is to exceed the maximum cul-de-sac length. That was approved for Stillwaters No. 1 based on the fact that it will be a temporary cul-de-sac and will eventually join when the property to the south is developed. The variance is also needed for Stillwater No. 2 and is supported for the same reasons. The second request is to providing pedestrian facilities on Kona Ranch Road. During the hearing for Stillwaters No. 1, an agreement was reached that the developer would install a 5 foot

wide, separated, pedestrian facility from Royal Coachman Drive to Mullan Road and Public Works will contribute three feet to it for a total width of 8 feet. Again, the variance request is conditionally supported for Stillwater No. 2. This will allow the developer to vary from installing pedestrian facilities to the west on Kona Ranch Road and instead have an RSID waiver on the plat so that could happen in the future.

The conditions are almost the same as for Stillwaters No. 1. Condition 1 is that the developer contribute to the Mullan Road transportation system fund. Condition 3 is that the developer will install the sidewalk along Kona Ranch Road. Condition 4 is that plans for residential fire protection systems be approved by Missoula Rural Fire prior to issuance of a Zoning Compliance Permit. The other conditions are basic ones pertaining to standard issues including weeds and petitioning into the Urban Transportation District.

The design of Royal Coachman Drive has been revised since the submittal of Stillwaters No. 1. It was originally a divided road with a common area median. That has been changed to a single two lane road. There is a condition that Public Works review and approve the design change.

Nick Kaufman, WGM Group, developer's representative, stated that Jeri Fischer, the Real Estate agent representing the owners of the property, was also present today. He gave a Power Point presentation regarding the proposal. He showed an aerial photo of the Mullan Road/Kona Ranch Road area where the proposal is located. He also pointed out where the new Phantom Hills subdivision, El Mar Estates and development on Cote Lane are located. Grass Valley Farms is across Mullan Road from a portion of the property being discussed. The 201 Sewer Service Area lies easterly of the Grass Valley French Ditch and there is a sewer main, lift station and easement in the area that serves El Mar Estates. Another slide was looking west from Phantom Hills, showing Smurfit-Stone, some of the holes on the Phantom Hills Golf Course, the Grass Valley French Ditch and the boundary of the 201 Sewer Service Area. Thirty years ago the whole area was owned by Art Deschamps and in flood-irrigated agricultural production. It has been divided into mostly 5 acre and some 10 acre tracts with not much consideration to design other than to create rectangular parcels. On his property in the Grass Valley Farms, he has a red-tail hawk nest, frequently sees deer and has Osprey teach their young to fish in his pond. Blue Herron's use the pond as well. Gardens and agricultural use on those 5 and 10 acre tracts are thriving and wildlife use the area regularly. However, the area has changed over the past 30 years. Another slide showed traditional homes and 5 acres tracts in the area. Because these tracts are more intensely managed, they can be irrigated and rotated better than larger tracts. Livestock, fruit trees and garden production are associated with this homes. The proposed Stillwaters No. 1 and No. 2 land had been previously divided into 20 acre tracts. Directly across Kona Ranch Road to the north are 5 acre tracts. Tracts on Snowdrift Lane were part of the former Art Deschamps Ranch. El Mar Estates was formerly part of the Kona Ranch. The 1-acre tracts on Cote Lane were also part of the Kona Ranch. A site plan for Stillwaters No. 1 and No. 2 shows density at about 2.5 dwellings per acre, which is less dense than the existing zoning. They have tried to create view corridors and pull the homesites back as far as possible from Kona Ranch Road. The 5 acre tracts are located adjacent to Kona Ranch Road to match the type of development across the street, except that homes will not be allowed near the street. There are also linear common areas through the project and building setback lines which preserve open space in several location so the public and wildlife can see through the housing development in both north/south and east/west directions. There is an internal trail system proposed with a circular path which then goes out to Kona Ranch Road and connects with Mullan Road. In the conceptual site plan, it shows how the homes will be clustered. In addition to WGM Group, the design team for this project includes Carl Thiesen, a well-known landscape architect from Billings, and Don McArthur from McArthur, Means and Wells. On the one acre tracts it is proposed to put the buildings close to the road and create open space corridors. The building envelopes limit where structures can be located. The next few slides showed the open space corridors that would be created with the project. Another slide showed the view corridor down Mullan Road by El Mar Estates and Phantom Hills. The back of homes in El Mar Estate are visible on Mullan Road. The setbacks required in Stillwaters will not interfere with the view on the public roadways. He showed a slide of an open space corridor created with a subdivision up Rattlesnake Drive. It creates an open space and wildlife corridor right up to the saddle of Mount Jumbo, even though there are clusters of homes. There are design guidelines included in the covenants for Stillwaters to enforce the building envelopes and locations. Another slide showed an architectural rendering of homes proposed in Stillwaters. A lot of research was done before the design phase of Stillwaters by the landscape architect, the architectural team and site planners. They visited the Stock Farm in Hamilton. One of things that impressed them was the type of fence used. It is a green treated wood fence post that blends in well with the surrounding with 5 strand smooth wire to reduce the impact on wildlife. Mr. Thiesen has designed some landscaping buffers for the project. They want to maintain the open space corridor but they also need a buffer from the road. The proposal includes that buffer and incorporates a water feature at the entrance of the subdivision. Plans were revised to eliminate the divided entrance road. Again at the subdivision up the Rattlesnake, a low berm was created, then landscaped, so people on Rattlesnake Drive cannot see the homes. Mr. Thiesen also did a rendering of how the mounding and landscaping will work, included a low stone wall. Another slide showed an example of a low stone wall in use, again in the Rattlesnake area. A few more slides showed schematics of the water feature and walkway leading to Mullan Road. He then concluded the Power Point presentation. He thanked staff for their time on the review of this project. The Planning Board voted in favor of the project by a vote of 5-1. He requested that Condition 1 be deleted. This condition requires a contribution for each lot in the subdivision to the Mullan Road transportation system fund. The primary objection is that both Mullan Road and Reserve Street are State routes, funded and financed by the State of Montana. The State gets their money from income taxes. Local government is financed by property taxes, so it doesn't matter what someone makes per year, if they own property, they pay property tax. Road improvements that can be funded through income tax or federal funds reduces the burden to already overburdened property owners in Missoula County. Also, unlike Phantom Hills, which was the first subdivision on Mullan Road to be required to contribute to this fund, this project is much closer to alternate access routes, Big Flat Road to Blue Mountain Road, or across the Maclay Bridge or to Deschamps Lane. During the pre-application stages for Stillwaters, there was no mention made of contributions to this fund. He asked the Board to consider those points, as well as a legal challenge that could result by the imposition of such fees. He asked the Board to consider favorably Stillwaters on the Clark Fork No. 2 and remove Condition 1.

Bonnie Snavelly read a prepared statement. *Good afternoon Commissioners, my name is Bonnie Snavelly and I am the adjacent landowner most affected by the proposed subdivision. I am here asking that you deny approval of Stillwaters on the Clark Fork No. 2 Subdivision. I have handed you a map of the area and copies of petitions and letters signed by nearby residents opposed to the subdivision. I hope the map is helpful to you to understand the lay of the land. The area in question is near the intersection of Kona Ranch Road and Mullan Road. Kona Ranch Road runs along the northern part of the property. The proposed subdivision is marked on the map in pink. The proposed subdivision is within an*

irrigated field which is outlined in green. To the west, east and south of the proposed subdivision is my land. The Yellow Stone Fly property is indicated in horizontal stripes and in yellow. Generally, between my property and the property of the Margueritte Miller Trust, of which I am the trustee, I surround the Yellow Stone Fly property, including the proposed subdivision. I am the person most affected by the proposed subdivision. I am opposed to the proposal because of the adverse effect it has on agricultural values, particularly my agricultural values. The map I have provided shows the location of the Grass Valley Ditch, which provides the irrigation water to my property. The irrigated fields have historically been irrigated through a wheel line type irrigation system that operates off a main line, shown in black on the map. This main line bisects the proposed subdivision. I am unable to operate my wheel lines both to the east and to the west off the main line at least north of the Grass Valley Ditch. The proposed subdivision will, for all practical purposes, prevent me from irrigating my fields, marked Parcel C and Tract 7 on the map, without incurring great expense of construction of new and independent irrigation systems. In addition, the pump which pulls water from the ditch is connected to an electrical line which crosses the northeast portion of the proposed subdivision. This electrical line is above ground and clearly conflicts with the proposed subdivision. If the electric line is removed, I am unable to operate the pump and therefore I am unable to irrigate my fields south of the ditch. The proposed subdivision, if approved, will therefore have a substantial adverse effect on my ability to irrigate my fields, unless I incur tens of thousands of dollars of expense to completely relocate the pump, the main lines, re-engineer the wheel lines and relocate the electric service lines. In addition, the proposed subdivision will remove the land within the subdivision itself from agricultural production. The Missoula County Conservation District has written to me and I have included a copy of its letter, confirming the adverse impact on the agricultural aspects of my property. The proposed subdivision is zoned C-RR1 "Residential." It is an express intention of such zoning to "preserve agricultural land and to enhance the environmental amenities found in rural areas." This subdivision does not preserve agricultural land and, in fact, this proposed subdivision is detrimental to agricultural land. I expect that in the near future I will also be before this Commission with regard to the subdivision of my and the Trust's property. It is my intent and my goal to keep the irrigated fields primarily in agriculture as I believe this will enhance and better any surrounding development. It has been incorrectly stated in previous meetings that there has been a master plan for the Kona Ranch. There have been no master plans. If and when I submit a master plan, I intend to retain the agricultural character of the irrigated fields. I have concerns for the wildlife as well. The area of the proposed subdivision is home to a large herd of white tail deer. I have also included in my materials a copy of a letter received from the Montana Fish, Wildlife and Parks which states that my ranch is "truly an amazing resource" for wildlife. The proposed subdivision does not provide appropriate migration routes for the deer. I am very familiar with the migration patterns of this deer herd, having lived there most of my life. The deer move from the river, across the fields and back. The migration routes of the proposal will route the deer onto Kona Ranch Road, an obvious danger to both the deer and to the driving public, and contrary to the migration patterns now existing. The wildlife migration routes should run in a more east/west direction. The subdivision straddles a drainage easement which provides drainage from lands to the south which was given to Missoula County. I have included a copy of this easement, signed by myself and my mother, with the materials I provided you. This easement provides for storm run-off from the elevated lands to the south and to the east which drain, due to the slope, to the west and the north. It is unclear how the proposed subdivision incorporates the easement, although it would appear to run through the middle of at least three of the building areas and perhaps the proposed Royal Coachman Drive. I believe the proposal may be to redirect the drainage to my property on the west, Parcel C. I should not be burdened with this drainage easement. I certainly do not consent to a re-routing of the drainage onto my property. The easement should stay in place and Yellow Stone Fly should properly plan around this easement. My concerns are shared by others in the neighborhood. Yellow Stone Fly organized a neighborhood meeting, as required by the regulation, but sent out only a few notices to the surrounding landowners. The meeting was poorly attended due to the inadequacy of notice and because it coincided with the public meeting regarding the Black Mountain Fire. I subsequently organized my own meeting which was substantially better attended. Many of those attending the meeting signed petitions opposing the subdivision. I have provided you with copies of the petition. It is fair to say that there is opposition by nearby residents to the proposed subdivision. Decisions made by the Commission today will have a significant effect on how this property and Grass Valley looks in the future. Missoula County has sought to maintain the agricultural characteristics of many areas through its zoning plan. This proposed subdivision does not preserve agricultural characteristics. I hope that the Zoning Plan is not merely window dressing, but reflects our true goals of Missoula County. You should now take the action required to reach those goals and deny this proposed subdivision.

Jim Cusker stated his property, the Cusker Family Ranch, borders the Kona Ranch at the southeast corner. The proposal presented by Mr. Kaufman is a very well done. His problem is that he doesn't agree this is the optimal long term use for this land. It is extremely valuable, productive farmland. It has been in productivity for 130 years. Gaspar Deschamps farmed it as dry land for the first 30 years. He was making money from this land. About 100 years ago, Mr. Deschamps and others put in the Grass Valley French Ditch which moves water three miles upstream from the Clark Fork River. For the past 100 years, the land has been highly productive irrigated farmland. When he moved to the area 65 years ago, the land was still productive and still owned by the Deschamps. The farmhouse was not located on productive farmland, it was toward the edge of the property near the riparian area. Mr. Deschamps followed the wise land ethic of not building on productive land. The property then changed ownership and 50 years ago, the new owners decided they needed a new house. One was built on the clay bluff overlooking productive farmland, still adhering to the old land ethic. He presented a soil type survey map from the USDA. Mention was made of this by the planners. The land in the northwest corner of the proposed subdivision is classified as Soil Type 34, Soil of Prime Statewide Important. The rest of the property is Soil Type 45, Grass Valley Silty Clay Loam, Slope 0-4%, which is also quite productive and has been irrigated for 100 years. The productivity of crops that can be raised on each of these soil types is identical. The map shows a dotted black line which represents the property owned by Yellow Stone Fly. This property completely bisects the agricultural lands and the property owned by Bonnie Snively. The proposal says that it will take approximately 64 acres out of production, but it really takes 230 acres out of production. The blue line on the map indicates the highly productive, flat, irrigated land on the Kona Ranch. He doubted if Yellow Stone Fly would be interested in farming their 64 acres and it is doubtful if Bonnie will be able to continue to farm her land if the land is divided as proposed. Once this resource is gone, it is gone for good. This is the last large chunk of agricultural land on Mullan Road from Reserve Street to out past Stone Container. If the proposal is approved, it removes a big chunk of agricultural land forever. Allowing this proposal does not look far enough into the future. Missoula will most certainly continue to grow. Agricultural land will be necessary in the future as well. There is a trend in the United States toward large cooperative truck gardens operating at a profit that furnish nearby cities with homegrown vegetables. The fresh fruits and vegetables at Missoula's Farmer's Market are being grown on small lots around the County. Even as late as the 1950's, a large portion of the fresh vegetables sold in Missoula stores were locally grown. If Missoula gets as large as Spokane, it would be nice to have a large chunk of

agricultural land nearby where vegetables could be grown and sold locally. This subdivision will add to the ever growing list of land that is being taken out of agricultural production. He hoped that would not happen. He proposed to both Bonnie Snavelly and Yellow Stone Fly to leave those 230 acres as they are. Modify the subdivision and move it to the south or the west and put it on the hill, where it is not irrigated or used for farmland; people would have a beautiful view of the farmland below them. He would recommend that everyone follow the wise stewardship shown by the previous owners of this wonderful agricultural land. Don't build on this land and protect the soil for the future.

Michael Saul stated that his family came here in 1893 and has lived here ever since, primarily farming in Grass Valley. He is also the General Counsel for the Grass Valley French Ditch, which hasn't really discussed this issue. Mr. Cusker's comments are important. He has known all of the owners of this property or their descendants and this was always considered by the folks in Grass Valley to be one of the prime ranch properties. When Alrick Deschamps sold his property to Buss and Roberta Latta in the late 1940's, Buss and Roberta had great pride in this ranch property and the agricultural values it represented. They built a house on the bench and provided a great stewardship for this property. When the Millers moved to the area in 1957 from the dry country in Eastern Montana, they created a wonderful commercial operation and raised registered Charolais cattle. In 1980 or 1981, he was approached by the County Surveyors Office about building the Kona Ranch bridge. He felt the bridge would impact the Big Flat and Grass Valley. The first person he sought advice from was Margueritte Miller, to find out what her vision was for Kona Ranch and Grass Valley. They talked about some of the riparian areas and the possibility of putting them in conservation easements. They also talked about doing something for the irrigated land because she wanted to keep it as agricultural property. The Grass Valley French Ditch was built in 1908 by hand and horse-drawn plows. It was one of the largest private irrigation operations in Montana. It eliminated the need of the early farmers to rely on the weather and turn the land into very productive farmland. As development occurs, the ditch is becoming more expensive to operate as it has fewer sources of income. It makes the water more expensive to the existing agricultural users. The cost of the water is approximately three times higher now than it was just three years ago. Eventually, use of the ditch will become cost prohibitive and force conversion of agricultural land to something else. This is a large open space with scenic, wildlife and agricultural value and historical interest. Grass Valley is one of the oldest agricultural communities in Montana and it is being lost quickly.

James Cox, 220 University Avenue, stated that is a retired Science professor from the University of Montana. He read a prepared statement. *Two weeks ago I was fishing and cutting wood on my place on the Big Flat. I saw the signs on the Kona Ranch about a hearing the following evening. I attended out of curiosity and I recall some vivid impressions from that meeting. First, the developers presented an attractive and thoughtful plan for a housing development on a segment of the Kona Ranch property. We then learned that there's an ownership dispute and disagreement as to the proper land use on the place. Clearly I found out that the proposed development seems to be quite consistent with the earlier zoning established for the Kona Ranch area. We also heard a persuasive appeal by Mr. Jim Cusker, a Kona Ranch neighbor, about the folly of building on those parts of the Kona Ranch that are deep productive soils. Mr. Cusker urged us to plan for the long term and to plan not for one generation, but for our grandchildren, realizing the survival of our soils is our grandchildren's real future and their legacy. I've known Jim Cusker since the 1950's. He and I have both been Montana High School and University Biology and Conservation teachers. Jim and I share something else. He has a place just upstream from the Kona Ranch and in 1976, I bought 78 acres downstream from the Kona Ranch, across from and just below the Council Groves State Park. My wife and I built a home on the place and lived there for 15 years. We moved back into town after my sons grew up and left home. Then a few years later, Jim Cusker and I, quite independently, placed both of our holdings in conservation easements with a Montana land trust. It's our contention here today that our experiences with comprehensive planning may be exactly what is needed in developing the Kona Ranch for everyone's benefit, including the developers and the owners. Land trust discussions can address not just appropriate housing like the beautiful homes the developer proposes, but the agricultural concerns made clear by Mr. Cusker, wildlife concerns and riparian issues on the Clark Fork, which can affect our Missoula fisheries. This can be a major concern. I know this because my sons fished our half-mile of riverfront as they grew up, kindergarten to college. They became such expert fly fisherman that they now make their living and provide a living for a dozen guides as the Kingfisher Fly Shop on East Broadway. More and more, Missoula will need to emphasize outdoor recreation as its primary industry and the Kona Ranch can make important contributions to that goal. Our family conservation easement is largely focused on water and wildlife. But what Mr. Cusker and I are both saying is that the Kona Ranch needs comprehensive planning, planning perhaps with Fish, Wildlife and Parks and also with small conservation groups who are sympathetic with the developers. They may need to build and sell Kona Ranch property in a sequence that permits them to raise capital from one phase to invest in the next. What the owners and developers may not realize is that comprehensive planning can serve them as it has us in many ways financially. Their good deeds need not go unrewarded. First, as a result of comprehensive use planning, potential buyers will pay more for homes realizing that their property will not become part of a high end Levittown. They will know the whole picture in advance and will be delighted to be part of a wildlife, agricultural and riparian land trust plan. They will be willing to pay for the advantage of a responsible, no surprise, future. Secondly, there can be great financial advantage in a land trust plan that results in residentially zoned property, which this is, being used for conservation purposes. Such easements are greatly rewarded by the Internal Revenue Service and tax advantages to offset apparent loss of value. Also, if residentially zoned land comes into an agricultural exemption, one can expect property taxes to be revised drastically downward. We are not suggesting that the County say no to this proposal. What we are saying is that proposed development is in exactly the wrong place on the Kona Ranch. We are asking instead that the decision be deferred for a time to be agreed upon while the owners and developers have a chance to talk with a land trust organization, with Fish, Wildlife and Parks, Soil Conservation Service, for their input. They will need time to do the numbers and assess possible advantages of such a plan as well as the satisfaction of doing the right thing for everyone. Thank you.*

Mike Snavelly stated that he respects what Mr. Cusker said. It is well known how water levels are dropping in the Southwest and High Plains because irrigation is lowering the groundwater. In the last 60 to 70 years, the ground water has dropped over 100 feet, simply because big pumps are taking it out to irrigate. 100 years from now, it could become unusable because the water will be too deep and unavailable. That research has been done by the USGS and it is very valid. That is an additional reason why the agricultural land would be invaluable to future generation. Mr. Kaufman pointed out the proximity of the sewer line but the proposed subdivision will not be connecting to it. The water table and static water levels in that area are at the 6 to 7 foot level. Losing irrigation ditches, just like losing rivers, create mounds underneath them because of the infiltration below the ditch or river. It is reasonable to say that houses close to a ditch will have much higher water levels than allowed by code. If and when this proposal is approved, it should be required to



connect to the central sewer system. The hydrologic conductivity of the soil is much faster than clay soils, it would take less than a day for the effluent to percolate down to the water table.

Jim Valeo stated he owned property east of the Kona Ranch. He felt it was absurd to consider this project without requiring it to hook to the sewer. He could not believe that was even under consideration when the sewer is only a couple hundred yards away from it. Mike Snavely is a Hydrologist. If he says the water level is 7 feet underground, that is true. He also said a drainfield is four feet below ground, leaving only three feet between where the effluent begins to percolate and the water table. Mr. Kaufman presented a well detailed proposal covering 34 acres. It looks nice by itself, but what the Board must consider is that the Kona Ranch is over 700 acres. If this is approved, the trap the County falls into is piecemeal zoning, which is classically wrong. Mr. Kaufman said there would be further proposals coming for this land. Professor Cox was correct when he suggested a parcel of this size needs a master plan, not a piecemeal plan of 30 to 40 acres at a time.

Bo Larkin stated that he agreed with all the previous speakers. He is a representative of a forestry class from the University of Montana present today and they are studying land management decisions, uses, conservation easement, etc. Personally, he felt there must be a way to accommodate the inevitable growth that Missoula will face without damaging the agricultural potential of this particular piece of land. For reasons stated, ground water table, lack of a master plan, piecemeal zoning, he agrees that this should not be approved. It certainly looks like a very attractive development, but it could be in a better location. If the development is allowed to proceed, it would alter the historic character and agricultural potential of this land in an irretrievable way.

Dan Provo stated he was a neighbor near this development. He echoed everyone else's comments on being opposed to this subdivision at this time. It seems the planning in Missoula is happening in a piecemeal fashion. This proposal splits something right down the middle instead of presenting a master plan. Parts of the plan are attractive, but the whole area needs to be taken into consideration.

Katherine Beckly stated she has lived in Missoula for five years and has been a Montana resident for nowhere near as long as others who have spoken today. She worked as a carpenter building custom homes up Grant Creek and on Blue Mountain Road and up Pattee Canyon. She sometimes feels some regret for contributing to development that she would not support in her personal life. She asked the Board to reconsider Missoula County's commitment to preserving open space and piecemeal development. This does look like a nice plan, but she felt the transportation issue hadn't been addressed. The people who live out Mullan Road and Blue Mountain Road and Big Flat Road and Kona Ranch Road, all of their needs for shopping, fuel, etc., brings them right back out to Reserve Street. It will bring increased traffic to the already congested and non-pedestrian friendly Reserve Street.

Nick Kaufman stated that the people who have testified have raised some very good questions. Jim Cusker's map provided some important information. Yellow Stone Fly did not separate land from the center of the Kona Ranch, that was done by U.S. judge. Judge Peterson provided one of the heirs to the Kona Ranch, Douglas Miller, this piece of property. It was the action of Judge Peterson that left Bonnie Snavely with land on both sides of the partition. The County Commission has no authority to change or overrule a U.S. judge's decision. The discussion should be focused on the subdivision, not the impacts to agricultural land created by the partitioning of the property by a judge. It has been said that this takes land out of agricultural production. However on the 5 acres he owns, he has raised six steers, hay, has a pond, has a home, has two apple orchards, has a raspberry patch and a garden that supplies his home and two other families with fresh vegetables. The subdivision preserves truck gardening and the opportunity to continue agricultural production. Bonnie has a point about the deer. People stop along Mullan Road and Kona Ranch Road all the time to watch the deer herd. The deer move very well through Grass Valley Farms where he lives. Stillwaters No. 1 and No. 2 provide corridors that allow for wildlife to move parallel to the irrigation ditch and through the project in both north/south and east/west directions. It will not be as open as it currently is, he acknowledges that. The drainage ditch is not in the lowest portion of the property. They do not propose to relocate the drainage onto Bonnie's property at all. They will be working with Greg Robertson to properly locate the drainage ditch where it should go. The ditch was originally located without the help of detailed contour maps available today and is located in the wrong location. Mr. Cusker talked about soil type 45, Grass Valley Silt Clay Loam. The Missoula County Airport is located on that type soil. The Airport just purchased 600 acres from Dr. Pruyn and 500 acres from Charlie Deschamps, also Grass Valley Silt Clay Loam, for the proposed expansion of the airport. Jim Valeo donates his time to the Missoula Development Authority. The Missoula Development Park, which lies north of the airport, is also soil type 45, Grass Valley Silt Clay Loam. As the valley has grown, an airport was needed and it needs to be expanded now. Trade offs of agricultural land are made to accommodate what the community needs as it grows. The Development Park has been a very successful project for the County. Some of the lands belonging to the old family names have recently been subdivided by their heirs. Some of the descendants of those old family names, the Deschamps, the Pruyns, etc., have been trying to make a living from agriculture and many have had to sell pieces of their land to keep afloat. Even as recently as 30 years ago, money could be made in agriculture. Today, that cannot be done. This includes the Kona Ranch. Douglas Miller had to declare bankruptcy. Bonnie Snavely had to declare bankruptcy and the Marguerite Miller Trust had to declare bankruptcy. He questioned if this was still viable agricultural land. He appreciated Mike Snavely comments. They have done ground water monitoring on the property which has been submitted to the Health Department. This property is unique, where digging in Grass Valley silt hits a hard pan. The soil profiles test holes hit clay that was so hard it could barely be dug through with a backhoe. Two types of sewage disposal are being proposed. One is connection to City sewer, which is a very viable option. If individual drainfields are used, those that have been approved by the Health Department are an evapo-transpiration bed drainfield. Those Grass Valley soils are so compact that they barely perc. 1,500 linear feet of pressurized drainfield, with the effluent being treated and removed by evapo-transpiration, will be installed. They hope they do not have to use that type of drainfield as it is very expensive, their first choice is to hook to City sewer. He likes the idea of a truck garden, there is one on Mullan Road just between the jail and the new Bone and Joint Center which works very well. There is another on Spurgin Road. Mr. Cox idea of a land trust and conservation easement is a good one. Unfortunately, if the subdivision is delayed or denied, it removes the value of the land as a conservation easement. He felt they had done a good job with the design of this subdivision. The Growth Policy identifies this area for development. The zoning has been in place since 1976, at one dwelling unit per acre. They are not doing a rezoning. Most of the Kona Ranch is zoned one dwelling per acre. When doing a conservation easement, something is given up to preserve an identified value. In this case, agricultural value, wildlife value, scenic value, could be identified. The easement would be granted to not develop to protect those values; the development rights would be given up in exchange for a tax credit. If the subdivision is denied,

that raises the question of whether development rights even exist. If the development rights are not one per acre, or in this case, two and half times less dense than zoning, what can it be developed at. That would be the question of what they would be giving up to a conservation easement. Delaying the project tells appraisers or the conservation group that the County is looking at this piece of land differently than any other piece of similar agricultural land – the airport, the Development Park, the golf course, all the same soil type as the subdivision in question. All of those other locations could sink a well to irrigate the land making them just as important as the Kona Ranch. The Growth Policy, the zoning, extension of public sewer and the policies adopted for the Mullan Road transportation system say that this site is suitable for development. Their plan is two and a half times less dense than allowed by zoning, a cluster development that preserve the open space characteristics and allows the property to continue in agriculture.

Jim Cusker stated that Mr. Kaufman re-emphasized the fact that the County is changing rapidly from a rural entity to an urban entity. This is the one remaining tract of land on Mullan Road that is an agricultural unit. In the staff report, it states that the proposal does not comply with the Comprehensive Land Use designation of Rural Residential. He was surprised that Planning Board would overlook that. Regarding the effects on agriculture, the report concludes that there will be an incremental loss of land used for agriculture. This is not an incremental loss, it is monumental, it is disastrous. If the Board decides to postpone the decision, they are not changing the zoning. Should Yellow Stone Fly chose to place a portion or all of this agricultural land in a conservation easement, the remuneration to them will be enormous because it will be appraised as land developable at one dwelling unit per acre. A second appraisal will be done that will look at it if it is retained as an agricultural entity. The difference between those two appraisals will be huge, so great that it will probably pay them for the purchase of the property. A postponement does not take away the zoning and it opens the door for a profitable venture on the part of Yellow Stone Fly. He suggested that they talk to land trust about that prospect.

Colleen Dowdall stated that 2003 Legislature changed the requirements so that a subdivision cannot be denied based solely on compliance with the Comprehensive Plan. It is not that staff overlooked the fact that the Comprehensive Plan recommended something different. It has to be reviewed for its compliance, but any decisions may not be made based upon the Comprehensive Plan. The zoning on the property was done about the same time as the Comprehensive Plan was adopted. The Board also needs to look at the fact that the decision of whether this is appropriate for agricultural use or not was made when it was zoned, it was appropriate for development at that recommended density. It makes it difficult for the Board to now say it is not appropriate for residential development. It is zoned for residential development and that creates rights for the developer.

Chairman Carey stated that this discussion could get very lengthy and the Board is very aware of the planning and zoning issues.

Commissioner Curtiss stated that the Board is tasked by law to protect agricultural land, however, they cannot force people to farm.

Colleen Dowdall stated the requirement in the Subdivision and Platting Act is that the Board considers the effect of the subdivision on agriculture. It does not require that the Board protect agriculture. Under the laws of Montana, it is not possible to require someone to continue to farm their land. The effect on agriculture is intended to be a different analysis, not one that says someone has to keep farming because the public enjoys that fact, but rather whether a new subdivision has an adverse impact on farming in general. That is a difficult inquiry, because of the competing very strong rights of the subdivider being able to divide their property and the required analysis of the effect on agriculture.

Bonnie Snavely stated that she has watched over the years the attempted destruction of a very historic component of the community, very personal to her, her family and the previous owners. Her mother was part of the group that overlaid the C-RR1 zoning over the entire ranch. There is no 5 acre residential component on any part of it, it is all C-RR1, with the exception of neighborhood commercial at the intersection of Kona Ranch Road and Mullan Road, on property which she also owns. At the time the zoning was placed on the property, there was one legal description of the entire acreage. The 20 acre parcels were not ordered or approved by her mother and a major lawsuit ensued over their creation, they are there by default. Douglas Miller was not a beneficiary of Kona Ranch, he was a beneficiary of the Marguerite L. Miller Living Trust. If Yellow Stone Fly believes they have taken possession of the rights that came with the ranch as a collective unit, then they must be bound by the same limitations. Across the entire Kona Ranch, the C-RR1 zoning states that it is an expressed intention of such zoning to “preserve agricultural land and to enhance the environmental amenities found in rural area.” Collectively, the Kona Ranch encompasses approximately 725 acres. The subdivision only encompasses 44 acres. If it is approved, it will place a death knell on being able to exercise appropriate master planning and utilize available conservation easements with enormous economic benefits, to satisfy a request by people who got into the chain of ownership under very unusual circumstances. She asked that the Board make their decision based on the entire contents of the C-RR1 zoning. It has not been the appropriate time to look at conservation easements for this property, but that time is getting closer. The economic benefits of conservation easements will more than offset what could be gained by destroying 725 acres for a short-sighted benefit on 44 acres. The drainage easement done many years ago is positioned in the wrong place. The lowest point of this property is to the west, to the boundary that her portion shares with the proposed subdivision. In order to realign the easement, the homes cannot be located where they are. There is a complete failure with the platting of this subdivision, it is in the wrong place. Many years ago she was told to come back with a master plan. When she does, it will be with a master plan for the entire property. Saying no to this proposal bring Yellow Stone Fly back to a resolution she was trying to reach with her brother to plan for the property as a whole. There have been many bankruptcies, all caused by her brother’s litigation, which resulted in a judge partitioning the property. She asked that Grass Valley not be imperiled by what happened internally within her family. A slide of Mr. Kaufman’s Power Point presentation is looking across her fields that will be imperiled if this subdivision is approved. The water sampling was done during a time of extreme drought. Since Judge Peterson’s ruling, the fields have been divided and there has been no irrigation across them. It is imperative that connection to sewer be considered. She would again encourage them to look at the benefits of conservation easements. She has brought major master planners to her area. All of them have said it would be tragedy to destroy this property. She hoped the Board would not force her 525 acres down a path of urbanization that doesn’t need to happen.

Jackie Corday stated there has been a lot of talk about a master plan for the entire 725 acres. That would be ideal if this property was all under one ownership or owned by people who could come together to present an entire plan. However, they have been presented with a plat for subdivision review and there are subdivision laws that require the Planning



Department to review such a submission within 60 days. They don't have the luxury of telling the developer they don't want to review the plan because they think a master plan should be done for the entire 725 acres. They have to review the project as it is presented. There is not a law that allows the Commissioners to postpone their decision until this developer and Bonnie Snavelly comes back with a master plan.

Colleen Dowdall stated she did not know of any way the County could require the two different owner to plan development of their respective properties together, nor could the Board delay their decision or deny the subdivision for that reason.

Chairman Carey asked if the decision could be delayed to give them the opportunity to work something out.

Colleen Dowdall stated the consent of the subdivider would be needed. Without their consent, they could have the court compel the Board to act or the court could act instead. When Bonnie mentioned that she was told many years ago to come back with a master plan, she had requested that a previously approved preliminary plat be amended to allow different size lots. The Commissioners said they would approve the request but they would like to see a master plan for the entire area. The requested master plan for the area was not a requirement, it was an expressed desire by the Board.

Commissioner Evans stated that she was grateful to live in the United States of America. It recognizes property rights and personal rights. The Board cannot say to someone that they cannot develop their land because they want to see them keep farming. The law gives the Board only certain things on which to make a decision. Personal property rights are one of the criteria. If there is a question on a subdivision, the Board must fall off on the side of the developer.

Colleen Dowdall stated the statute says that for certain elements, mitigation of impacts, the Board has to give due consideration to the expressed desire of the developer.

Commissioner Evans stated this land must have been for sale. The current owners could not have purchased it unless someone decided to sell it, which is their right. The owners have picked a good representative to design the subdivision with due consideration for the land. She respected what Jim Cusker has done on his land. The fact that Mr. Cusker and Mr. Cox care about the land is very important. The County has drafted protection for riparian areas, a highway beautification rule, land sensitive zoning. The purpose of those protections is to provide the ability for people to use their land with certain caring about the land. She could not in good conscience deny this subdivision because she did not see a reason to do so. She suspected the parties have already thought about what could be done with the land, so a postponement would do no good. The Board cannot second guess a U.S. judge and she believed a decision had been made recently on the appeal.

Colleen Dowdall stated that the Ninth Circuit has ruled and it was her understanding that the ruling ratifies the ownership of Yellow Stone Fly.

Commissioner Evans stated that from her perspective, the Board would have a difficult time denying the subdivision.

Commissioner Curtiss stated the property lines in the middle of an historic ranch were done by a U.S. judge, they were not done by the County or by Yellow Stone Fly. Those property lines ended up there because of the outcome of a legal dispute. Everyone enjoys looking out over farming land, but again, someone cannot be required to farm. The plans for Stillwaters have had a lot of thought and it appears quite nice, buffering from the road, five acre parcels across the road from five acre parcels so it looks similar. The developers have followed all the rules and regulations and it is less dense than it could be. Connection to the sewer would be good and she was glad it was being considered, but the Board cannot require it. There are times when the Board would like to see something different done, but they are bound by the laws that govern subdivisions.

Colleen Dowdall stated that a zoning map and the zoning district description, intent, permitted uses and standards that Bonnie referred to is included in the application packet.

Julie Guthrie stated that the City is in a period of expansion. As it moves to the outlying areas, is there the possibility of rezoning the land, changing it to a more dense, urban setting.

Colleen Dowdall stated there is a planning process occurring in this area right now that is looking at more dense development in the Mullan Road area. The sewer project that is underway will allow large landowners to develop at a density that support the sewer extension.

Julie Guthrie asked if that would include any commercial areas so people would not have to travel so far to meet their basic needs.

Colleen Dowdall stated those are some of the things that are being considered. She is not completely familiar with the planning process, but she has seen a map that does include the possibility of a neighborhood center area, however, there is not a lot of commercial contemplated because of the proximity to Reserve Street.

Commissioner Evans stated that the Growth Management process took over six years. One of the results was that this area was identified as the area where growth should occur.

Bonnie Snavelly stated that Commissioner Evans was correct about the Growth Management, but the line accompanying it bisects the ranch, well to the east of this property. This property is not included in the area identified for growth.

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

Chairman Carey stated that he agreed with most of what Commissioner Curtiss and Commissioner Evans have said, the Board cannot make people farm. This is a very attractive and thoughtful proposal. He would like to see this as an initial proposal. He believed that it might still be possible to preserve some of this prime land. Because of all the other areas that have already been paved over, it is important to see if this can be preserved for future generations. He would like to

see if something could be worked out with conservation easements or whatever. He would like to ask the developer to give this another week to see if something could be worked out.

Commissioner Evans stated that she could not agree to ask the developer to extend the deadline. There is a legal deadline that the Board must take action by.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(1)(i)(a) of the Missoula County Subdivision Regulations for Royal Coachman Drive to exceed the maximum cul-de-sac length of 1,000 feet, based on the findings of fact in the staff report; and conditionally approve the variance request from Article 3-2(8)(A)(iii) of the Missoula County Subdivision Regulations to not provide a system of pedestrian and/or bicycle circulation along Kona Ranch Road, based on the findings of fact in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the Stillwaters on the Clark Fork No. 2 Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 2-1 (Chairman Carey opposed).

Commissioner Curtiss stated that the students attending picked a very good day to hear about land use issues. The Board doesn't always have this much discussion on such issues.

#### **Stillwaters on the Clark Fork No. 2 Subdivision Conditions of Approval:**

##### **Roads and Walkways**

1. The developer shall contribute \$230 per lot to the Mullan Road transportation system fund for signaling the Flynn Lane/Mullan Road intersection and \$815 per lot to the fund for improving the Reserve Street/Mullan Road intersection. *Subdivision Regulations Article 4-1(12) and Public Works recommendation.*
2. The typical street and walkway sections, including slopes and sub base material, shall be subject to the review and approval of OPG and Public Works. *Subdivision Regulations Article 3-2(A), 3-2(B) and Public Works recommendation.*
3. The developer shall install a 5 foot wide separated walkway along the south side of Kona Ranch Road from the junction of Royal Coachman Drive to Mullan Road. The pathway along the entry section of Royal Coachman Drive shall be located on the east side of the road and shall connect with the pathway on Kona Ranch Road. *Subdivision Regulations Article 3-2(8)(A)(iii), 3-2(8)(A)(iv), Public Works and OPG recommendation.*

##### **Fire Protection**

4. Prior to Zoning Compliance Permit issuance, plans for installation of a residential fire sprinkler system shall be approved by the Missoula Rural Fire District. *Subdivision Regulations Article 3-7(1)(E) and OPG recommendation.*
5. The final plat must contain a waiver of the right to protest a future RSID/SID for public water for fire fighting purposes. *Subdivision Regulations Article 3-7(2).*

##### **Irrigation Water Rights**

6. The final plat shall grant irrigation ditch easements from the Grass Valley French Ditch to Lots 1-20. At the time of final plat review, the applicant shall provide evidence of transfer of the irrigation water rights to the Homeowners Association in conformance with all applicable State law. *M.C.A. 76-3-504(1)(i) and OPG recommendation.*

##### **Weeds**

7. A Revegetation Plan for disturbed sites shall be submitted to and approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and County Weed District recommendation.*

##### **Transportation District**

8. The applicant shall petition into the Missoula Urban Transportation District prior to final plat approval. *Subdivision Regulations Article 3-1(1) and 3-2(1)(3) and Missoula Urban Transportation District recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 3:45 p.m.

Resolution No. 2003-119 – Following the Public Meeting, the Commissioners signed Resolution No. 2003-119, relating to Missoula County Airport Authority, Airport Revenue Refunding Bonds, Series 2003, approving the issuance and sale thereof and related matters. Clerk and Recorder Vickie Zeier signed a Certificate as to Resolution and Adopting Vote, dated November 5, 2003.

**THURSDAY, NOVEMBER 6, 2003**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Curtiss was in Helena attending a meeting of the Montana Public Health Improvement Task Force. In the afternoon, Commissioner Carey attended a Travelers' Rest board meeting in Lolo.

#### **ADMINISTRATIVE MEETING**

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

Agreement – Chairman Carey signed an Agreement (#2004-10-08 & 2004-13-01-03 STEP OT), dated October 24, 2003, between Missoula County and the Montana Department of Transportation (State Highway Traffic Safety Office) for the Sheriff's Department to provide overtime enforcement for occupant protection, impaired driving, and traffic safety enforcement. This is a no-match grant in the total amount of \$21,000.00. The term will be ten days from the

date of execution of the Agreement through September 30, 2004. All other terms and conditions are set forth therein. The document was returned to Don Morman in the Sheriff's Department for further handling.

Amendment Request – The Commissioners approved and signed a letter, dated November 7, 2003 to Nick Kaufman, WGM Group, Inc., approving his request to amend Condition 8 of Canyon East Subdivision to reduce the width of the public access easement from 35 feet to 27 feet.

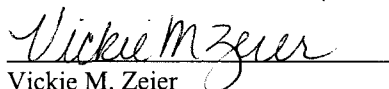
The minutes of the Administrative Meeting are on file in the Commissioners Office.

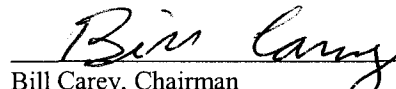
**FRIDAY, NOVEMBER 7, 2003**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Curtiss was out of the office all day. In the forenoon, Commissioners Carey and Evans and Clerk of Court Shirley Faust canvassed the City Election which was held on Tuesday, November 4, 2003. In the afternoon, the Board of Canvassers reconvened for a recount of one of the City Council Ward's election results.

Plat and Agreement – The Commissioners signed the Plat and Development Agreement for McClain Creek Ranches, a subdivision of Missoula County located in the N½ NE¼ SW¼ of Section 23, T 11 N, R 20 W, PMM, a total area of 20.030 gross acres, with the owner of record being Stanley C. Hendricksen. The Development Agreement, dated July 24, 2003 relates to driveways and weed control issues, as set forth therein.

Replacement Warrant – Chairman Carey examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Gregg Potter, Florence, Montana, as applicant for Accounting Warrant #28553, issued September 18, 2003 on the Missoula County 2360 Fund in the amount of \$750.00 (payment for September 1-15 grounds maintenance), which was not received in the mail. No bond of indemnity is required.

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

**MONDAY, NOVEMBER 10, 2003**

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

Claims Lists – Commissioners Carey and Evans signed four (4) Claims Lists, dated November 6, 2003, with the following grand totals:

- 1) \$98,400.05;
- 2) \$18,088.66;
- 3) \$28,718.26; and
- 4) \$21,453.54.

The Claims Lists were returned to the Accounting Department.

Monthly Report – Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Michael McMeekin, for the month ending October 31, 2003.

ADMINISTRATIVE MEETING

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

Agreement – The Commissioners signed a Memorandum of Agreement between Missoula County and WORD Family Basics for services to provide a parent component to the All Stars Program in two School District One middle schools. The total amount shall not exceed \$14,518.00. The term will be October 1, 2003 through September 30, 2004. All other terms and conditions are set forth therein.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-011 for the Health Department, in the amount of \$3,650.00, reflecting needed object codes.

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Mary Windecker for medical transcription services for the Partnership Health Center. Compensation for services will be \$.12 per line of medical transcription. This contract shall commence on an on-going basis beginning October 29, 2003.

Resolution No. 2003-121 – The Commissioners signed Resolution No. 2003-121, fixing corrected mill levies for Missoula County for fiscal year 2003-2004. The Resolution follows (in full):

**RESOLUTION NO. 121  
FIXING CORRECTED MILL LEVIES FOR MISSOULA COUNTY  
FOR FISCAL YEAR 2003-2004**

WHEREAS, on August 27, 2003, the Board of County Commissioners adopted Resolution No. 2003-087 which set the Fiscal Year 2003-2004 budget and set mill levies based on certified mill values. Subsequent to that date, it was noted that the value for the countywide mill levies was not updated from the preliminary Department of Revenues figure to the certified Department of Revenue figure.

WHEREAS the final certified value of the countywide mill is now appropriately included in the Budget Summary;

NOW, THEREFORE, BE IT RESOLVED that budgeted expenditures will not be increased from Resolution No. 2003-087.

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	36.73	A, B and C
Poor Fund	4.58	
Bridge Fund	4.25	
Weed Fund	2.11	
Child Daycare	0.29	
Fair Fund	0.31	
District Court Fund	3.89	
Park Fund	1.06	
Library	9.28	
Planning & Grants	2.94	
Aging Fund	1.16	
Extension Fund	1.52	
Mental Health Fund	0.50	
Public Safety	37.26	
Permissive Medical Levy	1.69	
Museum Fund	2.66	
Judgment Levy	0.81	
Technology Fund	2.29	
Risk Management	2.35	
<u>SUB-TOTAL</u>	<u>115.68</u>	
<u>MISSOULA COUNTY-WIDE DEBT SERVICE</u>		
Jail Bond	6.49	
Risk Management Bond	0.62	
<u>SUB-TOTAL</u>	<u>7.11</u>	
<u>TOTAL COUNTY-WIDE &amp; DEBT SERVICE LEVIES</u>	<u>122.79</u>	
Road Fund	16.26	
Health Fund	7.33	
Animal Control	0.98	
Permissive Medical Levy (County Only)	0.76	
<u>TOTAL COUNTY-ONLY LEVY</u>	<u>25.33</u>	

DATED THIS 10TH DAY OF NOVEMBER, 2003.

APPROVED AS TO FORM & CONTENT:

s/\_\_\_\_\_  
Michael W. Sehestedt

ATTEST:

s/\_\_\_\_\_  
Vickie M. Zeier, Clerk and Recorder

BOARD OF COUNTY COMMISSIONERS

s/\_\_\_\_\_  
Bill Carey, Chair

s/\_\_\_\_\_  
Jean Curtiss, Commissioner

s/\_\_\_\_\_  
Barbara Evans, Commissioner

Resolution No. 2003-120 – The Commissioners signed Resolution No. 2003-120, fixing tax levies for Missoula County for fiscal year 2003-2004. The Resolution follows (in full):

**RESOLUTION NO. 2003-120  
FIXING TAX LEVIES FOR MISSOULA COUNTY  
FOR FISCAL YEAR 2003-2004**

WHEREAS, on October 7, 2003, the Board of County Commissioners adopted Resolution No. 2003-108 which set the mill levies for all taxing jurisdictions within the County based on certified mill values. Subsequent to that date, it was noted that the value for the countywide mill levies was not updated from the preliminary Department of Revenues figure to the certified Department of Revenue figure.

WHEREAS the final certified value of the countywide mill totaling \$155,594 now is appropriately included in the Budget Summary;

WHEREAS, the levies issued on the tax bills contained the corrected mill levy amounts;

NOW, THEREFORE, BE IT HEREBY RESOLVED by this Board of County Commissioners that the Resolution be adopted for Fiscal Year 2003-2004 as moved, seconded and passed by the Board and as detailed below:

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<u>MISSOULA COUNTY-WIDE FUNDS</u>	<u>MILLS</u>	<u>ATTACHMENT</u>
General Fund	36.73	A, B and C
Poor Fund	4.58	
Bridge Fund	4.25	
Weed Fund	2.11	
Child Daycare	0.29	
Fair Fund	0.31	
District Court Fund	3.89	
Park Fund	1.06	
Library	9.28	
Planning & Grants	2.94	
Aging Fund	1.16	
Extension Fund	1.52	
Mental Health Fund	0.50	
Public Safety	37.26	
Permissive Medical Levy	1.69	
Museum Fund	2.66	
Judgment Levy	0.81	
Technology Fund	2.29	
Risk Management	2.35	
<u>SUB-TOTAL</u>	<u>115.68</u>	
<u>MISSOULA COUNTY-WIDE DEBT SERVICE</u>		
Jail Bond	6.49	D
Risk Management Bond	0.62	
<u>SUB-TOTAL</u>	<u>7.11</u>	
<u>TOTAL COUNTY-WIDE &amp; DEBT SERVICE LEVIES</u>	<u>122.79</u>	
Road Fund	16.26	
Health Fund	7.33	
Animal Control	0.98	
Permissive Medical Levy (County Only)	0.76	
<u>TOTAL COUNTY-ONLY LEVY</u>	<u>25.33</u>	
CITY OF MISSOULA	176.32	
MISSOULA COUNTY SCHOOLS	VARIOUS	
STATE OF MONTANA		
UNIVERSITY MILLAGE FUND	6.00	
STATE SCHOOL FOUNDATION	40.00	
SPECIAL FIRE DISTRICTS		
CLINTON RURAL	25.24	
MISSOULA RURAL	77.37	
ARLEE/JOCKO VALLEY RURAL	15.75	
FLORENCE-CARLTON RURAL	19.50	
EAST MISSOULA RURAL	14.63	
FRENCHTOWN RURAL	37.56	
SEELEY LAKE	28.89	
OTHER SPECIAL DISTRICT LEVIES		
SOIL CONSERVATION	1.41	
SOS HEALTH CENTER	3.08	
CARLTON CEMETERY	1.62	
MISSOULA URBAN TRANSIT	11.93	
SEELEY LAKE CEMETERY	4.31	
ELK MEADOWS WATER DISTRICT	65.00	
FLORENCE-CARLTON PARK	2.01	
SPECIAL ASSESSMENT DISTRICTS		F
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 FIRE	VARIOUS (SEE ATTACHMENT)	

SWAN VALLEY FIRE  
EAST MISSOULA SEWER

VARIOUS (SEE ATTACHMENT)

SPECIAL IMPROVEMENT DISTRICTS  
WATER QUALITY DISTRICT  
TAX INCENTIVES

VARIOUS (SEE ATTACHMENT) F, G  
VARIOUS (SEE ATTACHMENT) F  
VARIOUS (SEE ATTACHMENT) F

DATED THIS 10TH DAY OF NOVEMBER, 2003.

APPROVED AS TO FORM & CONTENT:

s/ \_\_\_\_\_  
Michael W. Sehestedt

BOARD OF COUNTY COMMISSIONERS

s/ \_\_\_\_\_  
Bill Carey, Chair

ATTEST:

s/ \_\_\_\_\_  
Vickie M. Zeier, Clerk and Recorder

s/ \_\_\_\_\_  
Jean Curtiss, Commissioner

s/ \_\_\_\_\_  
Barbara Evans, Commissioner

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

**TUESDAY, NOVEMBER 11, 2003**

The Courthouse was closed for the Veterans' Day holiday. In the forenoon, Commissioner Curtiss participated in the Veterans' Day Ceremony held on the Courthouse lawn.

**WEDNESDAY, NOVEMBER 12, 2003**

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

Claims List – The Commissioners signed the Claims List, dated November 9, 2003, with a grand total of \$298.75. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated November 10, 2003, with the following grand totals:

- 1) \$71,715.78; and
- 2) \$18,935.14.

The Claims Lists were returned to the Accounting Department.

Claims Lists – The Commissioners signed three (3) Claims Lists, dated November 12, 2003, with the following grand totals:

- 1) \$266,598.01;
- 2) \$1,393.25; and
- 3) \$730.24.

The Claims Lists were returned to the Accounting Department.

Plat – The Commissioners signed the Plat for Kane Estates, a two-lot subdivision located in the S½ of Section 26, T 11 N, R 20 W, PMM, Missoula County, a total area of 9.91 acres, with the owners/developers of record being Kenneth J. and Esther A. Kane.

**CHIEF ADMINISTRATIVE OFFICER MEETING**

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

Letter – Commissioner Curtiss signed a letter, dated November 7, 2003, to Karen Joyce-McMahon, Program Specialist, Office on Violence Against Women, Washington, D.C., confirming that Kristina Swanson at the Office of Planning and Grants is Missoula County's Project Director for the OVAW Safe Havens Grant #2002-CW-BX-0009. The letter was returned to Ms. Swanson at OPG for further handling.

Other items included:

- 1) Discussions were held regarding 1) Lolo RSID; and 2) the disposition of the Golden West Sewer Tracts.

Tax Abatement Requests – At the Clerk & Recorder's Departmental Meeting with Vickie Zeier, held on November 12, 2003, the Commissioners approved requests and/or letters regarding the following:

- 1) To approve a request from Roger Leak, Excelsior, MN to waive the 2002 Frenchtown correction mill levy for taxpayer ID #5821491;
- 2) To approve a request from Arlan B. Williams, Frenchtown, MT to waive the 2002 Frenchtown correction mill levy for Taxpayer ID #3364705;
- 3) To approve a request from Steven L. Roy to waive the 2002 Frenchtown correction mill levy for Taxpayer ID #5847884;
- 4) To approve a request from Kent Bartschi to refund taxes paid for renewing title W823685; and
- 5) To approve a request from Pamela Cordis, Frenchtown MT to waive the 2002 Frenchtown correction mill levy.

PUBLIC MEETING – November 12, 2003

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The Public Meeting was called to order at 1:30 p.m. by Chairman Bill Carey. Also present were Commissioner Barbara Evans, Commissioner Jean Curtiss, Chief Civil Deputy County Attorney Mike Sehestedt and County Public Works Director Greg Robertson.

Pledge of AllegiancePublic Comment

None

Routine Administrative Actions

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$238,376.29. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Hearing: Petition to Create Liberty Cove Sewer District

Chairman Carey opened the public hearing.

This is a consideration of a petition to create a Missoula County Sewer District.

A petition has been received by the Elections office to create a Missoula County Sewer District. The petition has been checked and verified. It contains signatures of 100% of the registered voters of the described district, thereby meeting the requirements of M.C.A. §7-13-2204. The areas to be included in the Liberty Cove County Sewer District are described as follows:

**All those particular parcels of land situated in Section 22, Township 12 North, Range 20 West, Principal Meridian, County of Missoula, State of Montana, being described as Parcel 3 and Parcel 2 of Certificate of Survey 5122, Tract 1A of Certificate of Survey 4349, Tract 3 of Certificate of Survey 2926, Tract 1 of Certificate of Survey 5232 and Tract 9-B of Certificate of Survey 3041.**

All parcels are according to records of the County of Missoula, State of Montana, and as shown on the Exhibit attached to the petition, containing 116.2 acres, more or less.

Mike Sehestedt stated that this action is mostly procedural. A petition has been received for the creation of a County Sewer District, pursuant to M.C.A. §7-13. The petition was verified and lawful required notice was given of today's public hearing. Under the statute, the procedure followed is that the Board may accept public comment on the proposal. At the conclusion of the hearing, the Board can make such adjustments in the boundaries of the proposed district as they find appropriate, subject to the limitation that property cannot be included that would not be benefited by the district and property may be included that would be benefited. After the Board's decision on the appropriate boundaries, the action taken is to refer the question of creation to the electors in the proposed district. If the district is created, the voters elect a Board of Trustees. In effect, a sewer or water district in the statutes is a special purpose unit of local government, similar to a school district.

Cory Gangle stated he was the attorney representing Liberty Cove on this petition. He was available to answer any questions the Board may have. He pointed out, as Mike Sehestedt mentioned, this is purely statutory. Pursuant to the statute, the only protests allowed are from anybody that resides or has property within the proposed district.

Elmer Palmer stated he was a resident of Lolo and a member of the Lolo Community Council. He understands that protests are only allowed from people who live within the district. However, a subdivision proposed on this tract of land, Liberty Cove, was denied by the Board sometime last year. That proposal was for 70+ homes and had no forethought as to access to the property from Highway 93. They had an idea of creating a free zone in the middle of the highway and blocking off access from Valley Grove to northbound Highway 93 which would have caused residents in the area to drive 5.5 miles to get to Lolo when they live less than half a mile away. At the Community Council meeting last evening, the discussion was that Mr. Ken Allen is trying to go around the County Commissioners and the Planning Board and find a way to develop this property by creating this sewer district and allowing condominiums that do not require subdivision review. The Council feels that anything that is done to this property should be done only after Mr. Allen comes up with an acceptable plan to deal with the traffic on to and off of Highway 93.

Michelle Landquist stated she was a resident of Lolo. She echoed what Mr. Palmer said regarding Mr. Allen's development. She is not saying he shouldn't develop his land, but "buyer beware." When someone purchases a piece of land that has had a history of troubles for development, they should be aware of the problems. Mr. Allen knows how to play the game. He is attempting to pull one over on all the residents surrounding that parcel and all of the people that drive Highway 93 into and out of Missoula. The health and safety of the public need to be considered. Any plans Mr. Allen has for the property need to be scrutinized by the boards in place to review such development. An environmental assessment should also be required because of the shallow ground water table.

Cory Gangle reminded the Board that the reason for today's hearing is not to petition for land development, it is pursuant to a statutory scheme enacted by the Montana legislature to create a sewer district. This is not an RSID or anything like that, it is purely statutory. If anyone wishes to challenge the statutes, they need to go through the proper procedures with the Montana legislature. He reminded the Board again that the only protests that can be taken into consideration are from individuals residing or owning property within the proposed district.

Chairman Carey stated that Mr. Gangle was referring to formal protests against the creation of the district. This public hearing was to get the public's input on the proposed action.



Cory Gangle stated he understood that, but he was referring to action on the specific petition, the only protests that are valid are from people living in or owning property within the proposed district.

Chairman Carey stated that the Board could redraw the boundaries of the district.

Cory Gangle stated that was correct, pursuant to the statute.

Chairman Carey asked if contiguous land owners were asked if they wanted to be included in this petition.

Cory Gangle stated he did not know if contiguous land owners were contacted. Notice of the proposed action and hearing were posted pursuant to the statute. Again, this request is purely statutory.

Commissioner Curtiss asked what the developer's purpose was for forming a sewer district. Were there plans for some sort of community sewer system?

Cory Gangle stated the developer is required by the Missoula City-County Health Department, if they want to have any type of community water or sewer system within this proposed district, to go through this process to petition for a sewer district. It is for future development to service a community sewer system, pursuant to statute.

Commissioner Evans asked if the Health Department had any concerns about the level of ground water. Are there concerns about the creation of the district and who is the final authority to approve or deny a system?

Peter Nielsen, Missoula City-County Health Department, stated the ground water where the proposed drainfields are sited was monitored and did meet the minimum separation distance to ground water. The development had to go through the Sanitation in Subdivision Act review because it involved multi-family and public systems. It was reviewed by the Montana Department of Environmental Quality. The Health Department made comments on the submittal to the DEQ to ensure that it met local requirements. DEQ has completed their review and it has been approved. The system specifically proposed is a recirculating sand filter, which provides an additional level of treatment in addition to a conventional drainfield system. That type of system removes nitrogen to some degree and also requires on-going maintenance in order to perform acceptably over time. The local Health Department requires that a sewer district or an RSID or equivalent institutional stability be formed by the developer in order to provide for long-term maintenance and operation of those specific systems. That is why this sewer district is being proposed.

Mike Sehestedt stated that he was aware that the developer is proposing condominiums and that carries with it a condominium association. The issues are not with the approvability of a system; the concern is being assured there is some institutional structure that will take responsibility for maintaining the system and assuring it operates in accordance with its permitting.

Peter Nielsen stated that was correct. The sewer district also provides that the financial arrangements are mandatory rather than voluntary.

Mike Sehestedt stated the Health Department's preference was for some sort of governmental entity as opposed to a homeowners association.

Peter Nielsen stated that was correct. A homeowners association is voluntary and can tend to fall apart over time. They don't provide adequate financial contributions or maintenance.

Mike Sehestedt asked if this level of maintenance would have been required for individual septic systems.

Peter Nielsen stated it would not have been required.

Mike Sehestedt stated a guarantee was not required for individual septic systems, they can be operated however the property owner deems appropriate.

Peter Nielsen stated the exception would be any individual septic systems that are approved for reducing nitrogen. If approval of a subdivision is contingent upon that performance being insured over time, then the Health Department would make the same requirement for an institutional structure.

Commissioner Evans stated that the petition before the Board today is a separate issue from what Mr. Palmer and Ms. Landquist were talking about. When Mr. Allen's subdivision proposal was denied, it was clear that he still had the option of putting condominiums on his land.

Elmer Palmer stated that he understood that. However, if there has been any submission of such condominium plans, it has not been made known to the Lolo Community Council, which is a reviewing agency of all subdivisions in the Lolo area. If no submission has been made, they should not be petitioning for a sewer district. Mr. Allen is trying to circumvent the problem with the traffic. He has no problem with Mr. Allen building on his property, but he did not believe that Mr. Allen had the right to build on this property if it will inconvenience everyone who lives in Lolo, south of Lolo and those who travel Highway 93. If Mr. Allen presents a reasonable and safe method for dealing with the traffic situation, he would have no objection to development.

Commissioner Evans stated she would not argue that point, she agreed with Mr. Palmer. However, the law allows review of only certain things. It appears that Mr. Allen is getting the necessary approvals prior to any proposed development to deal with the sewer system. The issue the Board must make a decision on is the proposed sewer district.

Mike Sehestedt stated there are two subdivision review acts. One is the subdivision review that is familiar to everyone. The other is the State's Sanitation in Subdivision Act. Under the County's authority, condominiums are exempt from review in either of two situations. First, a condominium is exempt from review if it is conducted on a parcel of land

created through subdivision review for condominium development. The other exemption is development of a condominium on an existing tract of land if the zoning regulations applicable to the particular area allow condominiums as a permitted use. In this case, the condominiums are being proposed on the portion of this property in Zoning District 35, which specifically includes condominiums among the permitted uses. That takes away any authority the County has to review the division of land. Sanitation in Subdivisions is simply to assure that the system meets all current State and local health standards and that some institution is in place to assure the system operates in accordance with the approval given. Mr. Nielsen spoke about the State reviewing this proposal, which was under the Sanitation in Subdivision review, the standards for design, engineering and operation of a system in this location. The only caveat is a local requirement that there be adequate institutions in force to see that the system is operating in accordance with the terms of the permit. The proceeding before the Board today has nothing to do with the division of the property. As the petition has been submitted, the Board of County Commissioners only action is to determine whether or not there is property in the district that should be excluded because it can't be benefited by the proposed works or if there is property that should be added to the district because it would benefit from the proposed works. Once they have made the decision on the appropriate boundaries of the district, the matter then goes to a vote of the electors in the district. In this case, all of the property is owned by one individual, the petitioner. There would be only one vote, an empty formality, but that is what the statute provides. It has been done for other developments in the past.

Michelle Landquist stated that Mr. Allen is the only one in the district because the petition covers only his land. The other adjacent landowners don't know what is going on. Rumor has it that the condominiums Mr. Allen is proposing – and rumor is all they have to go on because no plans have been submitted – will be more dense than what was proposed with the subdivision that was denied. The traffic issue will still be a major factor. Other sewer districts may have been approved before, but traffic was probably not an issue with them. She is not saying that Mr. Allen should not develop his land, but she believed he has not addressed the main concern, which is the additional traffic the development will create. She is asking the Board to say neither yes nor no until they have heard from the Department of Transportation.

Chairman Carey stated that issue was not currently before the Board.

Commissioner Curtiss stated the Board could not deny the petition based on those reasons.

Elmer Palmer stated the Board should consider expanding the boundaries of the district to include all the landowners on Bird Lane and Valley Grove. All those people would benefit from a sewage disposal system and the Lolo 901 sewer would not have to be extended to the area.

Mike Sehestedt stated it would benefit those people only if they intended to hook up to such a system. He understood the frustration of Mr. Palmer and others, but to use pretext to reach a specific outcome was not warranted. To expand the boundaries based on the fact that it would be a benefit to these people, when the sole purpose of expanding the boundaries would be to defeat the project, is a pretext. If there was a plan that would indeed serve their property, that would be one thing, but if the sole reason for extending the boundaries is to create a vote to defeat the project, which seems an abusive and unlawful procedure. If there was some real interest in becoming part of this sewer district to address some real issues, that would be a legitimate consideration. In the context that Mr. Palmer made the suggestion, it would be abusive and a pretext to do that. MDT will deal with access issues to Highway 93. The County has blunt tools to deal with land use development in the State of Montana. The best tool is subdivision review. In this case, what came out of subdivision review was not acceptable so the subdivision was denied. Now there is the situation where development is proposed that is not subject to land use review. The only zoning in the area specifically permits condominium development with the net result that these condos are not subject to review as a subdivision. The balance of the property is unzoned. If Mr. Allen wanted to put condominiums on those portions of the property, it would trigger subdivision review. If Mr. Allen or a subsequent owner chooses to put up rental units without dividing the property, there is no land use review. The existing zoning permits what Mr. Allen wants to do. The only control on the unzoned areas is subdivision review, but if rentals are proposed, there is no legal way the County can review it. When the subdivision was turned down, the County lost the only leverage they had to force any kind of improvements on the road. Now the question before the Board is whether or not to create a sewer district to deal with sewage disposal issues. It is unfortunate, but the current laws governing condominiums make this exception. For whatever reason, 28 years ago when the property owners on Bird Lane chose to zone their property, they chose to specifically permit, among other things, condominiums.

Chairman Carey stated again that the petition before the Board is to create a County sewer district.

Mike Sehestedt stated that first the Board needs to set the boundaries of the district. Second, they may, if they wish, continue the hearing from week to week, for up to four weeks, if they feel they do not have enough information. At the end of the day, either today or to whenever the hearing has been continued, the Board needs to set the boundaries, create the district and set it for a vote. He is not saying that additional property cannot be included, but there needs to be a factual basis for doing so, other than a desire to defeat the district. Notice of this action was published in the Missoulian twice as required by statute and notice was also posted in the area.

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

Commissioner Evans moved that the Board of County Commissioners approve the petition to create the Liberty Cove County Sewer District with the boundaries as submitted. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Mike Sehestedt stated that a resolution would be prepared to set the election. He suggested that it be done as a mail ballot election. The District will have to elect a board and that will end the County's involvement in the process.

Commissioner Curtiss stated that the Board has no control over the development of condominiums in the area. They are permitted in the zoning district. She did agree that the traffic was a problem.

Commissioner Evans stated that she expected the Department of Transportation would be taking a hard look at development in this area and likely make some changes on the highway to provide better safety.

Hearing: Petition to Establish a County Road (Buckhouse Lane)

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Chairman Carey opened the public hearing.

Greg Robertson presented the staff report.

This is a consideration of a petition to establish "Buckhouse Lane from Blue Mountain Road to 4646 Buckhouse Lane in Packwest Addition/Buckhouse Flats, located in Section 2, Township 12 North, Range 20 West, Missoula County, Montana."

The reasons for the request are as follows: 1) This public roadway is required for access to Tracts B and C, Amended Plat of Packwest Addition and Lots D-1 and D-2 of Buckhouse Flats.

The following landowners have been notified: R. Pruyn/D. Richardson, LLP; Vaeroy Enterprises, LLC; Commercial Properties, Inc.; Sharon L. Linjala; Big Flat Irrigation District; and Neil R. and Virginia Miller.

The plans were reviewed by the Public Works Department last year and the road has now been constructed. By statute, the Public Works Director and one Commissioner must conduct a site inspection and report back to the Board of County Commissioners, at which time they will make their decision on the petition.

Tom Hanson, an engineer with Professional Consultants, Inc., stated that Buckhouse Lane has been constructed to serve the Buckhouse Flats subdivision. It was shown as being dedicated as a County road as part of the subdivision. When they went to record the final plat, the Surveyors Office pointed out that there was a title issue with the Big Flat Irrigation Ditch. The underlying ownership is possibly still in the Miller's name, so in order to solve the easement question across the ditch, it is being petitioned as a County road.

Mike Sehestedt stated that the site inspection will determine what damage, if any, there will be to the ditch. Being none, as far as the ditch interest is concerned, will be presented to the Big Flat Ditch people and that will be the end of it.

Tom Hanson stated they do have a letter of approval for the crossing from the Big Flat Ditch Company.

Chairman Carey stated that Buckhouse Lane is part of the preferred alternative for the new Miller Creek Bridge. Does that impact this road in any way?

Greg Robertson stated that the preferred alternative for the Miller Creek bridge project, currently under Environmental Assessment, will impact this road and it will most likely be relocated, if the preferred alternative is selected. It will be incumbent upon the project to make that relocation and acquire any necessary rights-of-way to maintain and provide access. The location of the grade separation ramps will be basically right over where the road is currently located. The design of the bridge and access will avoid the fitness center and the carpet retailer, but this road will be a casualty. Buckhouse Lane is required for access to adjoining parcels so it will have to be relocated and will be part of the mitigation required by the Miller Creek bridge project. Mr. Hanson is aware of this possibility. There will be no additional costs to the County if the road has to be relocated.

Mike Sehestedt stated that the road is in existence and paved. It was dedicated as a County road as part of the Buckhouse Flats subdivision, except for the possibility of a potential issue over the Big Flat Ditch.

Greg Robertson stated that at the time the road was proposed with the subdivision, a preferred alternative for the Miller Creek Bridge had not been identified.

Tom Hanson stated that at this time, the preferred alternative would necessitate relocating this road. However, there is a lot of time between now and when an alternative for the bridge location is chosen. During that time, anything could happen.

There were no further comments. A site inspection will be scheduled and a decision on this petition will be made at the Public Meeting next Wednesday, November 19, 2003. The public hearing was continued until that time.

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

**THURSDAY, NOVEMBER 13, 2003**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Carey was in Helena to attend a meeting of the Fish, Wildlife, and Parks Commission regarding the Travelers' Rest land acquisition.

Claims Lists – Commissioners Evans and Curtiss signed two (2) Claims Lists, dated November 12, 2003, with the following grand totals:

- 1) \$38,172.38; and
- 2) \$10.00.

The Claims Lists were returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtiss signed three (3) Claims Lists, dated November 13, 2003, with the following grand totals:

- 1) \$637,949.11;
- 2) \$417.22; and
- 3) \$3,100.00.

The Claims Lists were returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Agreement – Chairman Carey signed an Assistance Agreement (#ESA990008 – Task Order #6) between the Missoula County Weed District and the Bureau of Land Management for the fifth year of a partnership project for assistance to the landowners within the Blackfoot Weed Management Project for noxious weed management. The total amount shall not exceed \$9,000.00. The term will be September 2, 2003 through March 31, 2004. All other terms and conditions are set forth therein. The document was returned to Sharon Reed at the Weed Department for further handling.

Agreement – The Commissioners reviewed a copy of the FY '04 expense budget and signed an annual Budget Agreement between Missoula County and the Montana State University Extension Service for the funding and operation of extension services in Missoula County. The total budget amount is \$394,582.00, for the period July 1, 2003 through June 30, 2004. The document was returned to Jerry Marks at the Extension Office for further signatures and handling.

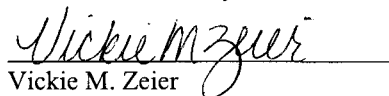
Agreement – Chairman Carey signed a Subordination Agreement between Missoula County and Jonathan D. Meek II and Rebecca J. Meek, 8617 Mullan Lane, First-Time Homebuyers who are refinancing through Washington Mutual Bank. Missoula County holds a second-position Deed of Trust on the property described as Lot 1 of El-Mar Estates Phase I-Supplemental No. 2, a platted subdivision in Missoula County. The document was returned to Jenifer Blumberg in the Office of Planning and Grants for further signatures and handling.

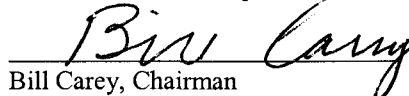
Request for Action – Per recommendation of Court Administrator John Bulger, the Commissioners approved the creation of a trust fund account for deposit of monies payable to District Court for use of the Court's videoconferencing facilities (billed at the rate of \$50 per hour). These charges help defray the expense of the system.

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

**FRIDAY, NOVEMBER 14, 2003**

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

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

**MONDAY, NOVEMBER 17, 2003**

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

Claims List – The Commissioners signed the Claims List, dated November 13, 2003, with a grand total of \$194,066.01. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated November 17, 2003, with a grand total of \$201,137.10. The Claims List was returned to the Accounting Department.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 23 - Pay Date: November 14, 2003. Total Missoula County Payroll: \$885,371.09. The Transmittal Sheet was returned to the Auditor's Office.

**TUESDAY, NOVEMBER 18, 2003**

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

Site Inspection

In the forenoon, Commissioner Evans accompanied Public Works Director Greg Robertson on a site inspection of Buckhouse Lane for the petition to establish a County road.

Claims List – Commissioners Carey and Evans signed the Claims List, dated November 14, 2003, with a grand total of \$114,069.88. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Evans signed two (2) Claims Lists, dated November 17, 2003, with the following grand totals:

- 1) \$10,710.55; and
- 2) \$11,617.04.

The Claims Lists were returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated November 17, 2003, with a grand total of \$61,025.58. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated November 18, 2003, with a grand total of \$47,000.87. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Agreement – Chairman Carey signed an Agreement between Missoula County and Structural Systems Inc. for Phase 1B (New Siding Package and Metal Siding Package) of the Ice Rink Renovation Project at the Missoula County Fairgrounds. The Contract Sum shall be \$215,232.00 (subject to additions and deductions as provided in the Contract Documents). The term and all other conditions are set forth therein. The document was returned to Doreen Culver, Bidding Officer, for further handling.

Agreement – Chairman Carey signed a Detention Center Reimbursement Agreement between the Department of Justice, the Department of Corrections, and Missoula County for the apportionment of the costs for confinement and medical expenses of individuals detained and committed in detention centers as provided in Title 7, Chapter 32, Part 22, MCA. The Confinement Rate for each inmate (retroactive to July 1, 2003) payable to Missoula County is \$60.00 per day. All other costs, terms and other conditions are set forth therein. The document was returned to Marlene Thompson in the Sheriff's Office for further handling.

Agreement – The Commissioners signed a Memorandum of Agreement between Missoula County and the Western Montana Mental Health Center/Turning Point for services for alcohol and other substance prevention, intervention and treatment services for prioritized populations in accordance with the Missoula County Alcohol and Other Drug Treatment and Prevention Services Plan for 2002-2004. The total amount shall not exceed \$82,714.00 (from County earmarked Alcohol Tax dollars). The term will be July 1, 2003 through June 30, 2004. All other terms and conditions are set forth therein.

Extension Request – Per recommendation of the Office of Planning and Grants staff, the Commissioners approved and signed a letter, dated November 18, 2003 to Nick Kaufman, WGM Group, Inc., approving his request for a 1 to 2 year extension of the final plat approval deadlines for Phase II-V of the West Pointe Subdivision. The new phasing plan schedule would be as follows: Phase I – May 23, 2004; Phase II – May 23, 2005; Phase III – May 23, 2006; Phase IV – May 23, 2007; and Phase V – May 23, 2008.

Request for Action – The Commissioners reviewed and signed the Missoula County Park Board's recommendation to award matching grant money (\$20,170) for improvements to the following parks and community recreation areas:

- 1) \$1,500 to the Lolo Area Community Organization for Westview Park repairs and updates;
- 2) \$3,000 to the Frenchtown Elementary School Playground/Mullan Trail Little League to install a well/pump;
- 3) \$3,000 to the Pfau Acres Homeowners for a sprinkler system;
- 4) \$3,000 to the Seeley Swan High School Government for an outdoor basketball court;
- 5) \$3,000 to the Lolo Peak Little League to purchase a lawn mower;
- 6) \$2,000 to the Missoula East Lions Club to purchase a mower, weed eater and storage shed;
- 7) \$1,670 to LOOPS (Lolo Organizing Opportunities for Pleasant Surroundings) for a larger and more efficient solar panel to power the sprinkler system, additional sprinkler heads, landscaping timbers, bark and nursery stock; and
- 8) \$3,000 to the Tyler Park Association for Phase Two of their project, to include a paved bike path.

The document was returned to Lisa Moisey, Parks Coordinator, for further handling.

Request for Action – The Commissioners signed a letter, dated November 18, 2003, to Walt Wick and Bill Wise of WW Realty, LLC, (c/o Ken Staninger, Properties 2000) regarding offers to purchase property in the Missoula Development Park, as follows:

- 1) The BCC accepted the full list price offer of \$705,954 to purchase Lots 3 & 4, Block 9, Phase 2, with amendments to the addendum as stated therein; and
- 2) The BCC delayed or rejected the offer on Lots 3 & 4, Block 11, Phase 2, until the deadline stated therein, so they can have time to work with neighboring owners or submit an offer for Lots 1 & 2 in Block 10.

The document was returned to Barbara Marténs in the Projects Office for further handling.

Quit Claim Deed – Chairman Carey signed a Quit Claim Deed, dated November 18, 2003 between Missoula County and Richard A. and Mary Sue Williams as Joint Tenants with Right of Survivorship, for property located at Lot 8, Hanson's Bitterroot Tracts, T 11 N, R 20 W, Section 25, Missoula County. The Deed was returned to Deputy County Attorney Michael Sehestedt for further handling.

Letter – After meeting with Robert Bourgeau on November 14<sup>th</sup>, the Commissioners signed a letter, dated November 18, 2003 to Mr. Bourgeau, responding to and denying his grievance with Missoula County and the Deputy Sheriff's Association.

Signature Pages – The Commissioners reviewed and signed two (2) Claims Signature Pages for the Larchmont Golf Course Accounts Payable Invoice Register, as follows: 1) dated November 10, 2003, in the amount of \$21,290.28; and 2) dated November 17, 2003, in the amount of \$8,948.03. The Signature Pages were returned to the County Auditor.

Other items included:

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- 1) The Commissioners agreed to sign on to a Montana Community Development Corporation ("MCDC") proposal for a Certified Regional Development Corporation. Commissioner Curtiss will work with Rosalie Cates and meet with the Commissioners from Ravalli, Mineral and Sanders Counties.

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

**WEDNESDAY, NOVEMBER 19, 2003**

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 Evans signed the Claims List, dated November 17, 2003, with a grand total of \$31,313.16. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Curtiss and Evans signed two (2) Claims Lists, dated November 18, 2003, with the following grand totals:

- 1) \$2,982.95; and
- 2) \$6,214.14.

The Claims Lists were returned to the Accounting Department.

Claims List – Commissioners Carey and Evans signed the Claims List, dated November 18, 2003, with a grand total of \$27,215.26. The Claims List was returned to the Accounting Department.

**CHIEF ADMINISTRATIVE OFFICER MEETING**

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

Budget Resolution and Amendment – The Commissioners signed Resolution No. 2003-122, dated November 19, 2003, a Budget Amendment for the Health Department (Junk Vehicle Fund), reflecting Capital expenditures in the amount of \$22,000 (from Junk Vehicles CIP fund) for the purchase of a 19 foot tilt diesel truck with rear tow unit. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County. With regards to the same diesel truck, the Commissioners signed Budget Transfer Control No. 04-012 for the Health Department, reflecting \$11,248 towards the purchase of the truck (for a total purchase price of \$33,248).

Agreement – The Commissioners signed a Memorandum of Agreement between Missoula County and the Family Law Advice Clinic for the provision of legal assistance for clients who cannot access the legal system because of economic barriers. The total amount shall not exceed \$5,350.00. The term will be July 1, 2003 through June 30, 2004. All other terms and conditions are set forth therein.

Other items included:

- 1) The Commissioners reviewed a Memorandum, dated November 17, 2003 from the WGM Group, Inc. regarding the ongoing efforts in working with landowners in the Mullan Sewer RSID concerning the solicitation of grid road rights-of-way along with sanitary sewer easements, particularly the Dougherty easements. The BCC moved to direct the staff to proceed to perfect the easements by December 16, 2003, when the one-year time period runs out.

**PUBLIC MEETING – November 19, 2003**

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Jean Curtiss. Also present were Commissioner Barbara Evans, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall and County Public Works Director Greg Robertson. Commissioner Chairman Bill Carey was on vacation.

**Pledge of Allegiance**

**Public Comment**

None

**Routine Administrative Actions**

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$1,665,759.55. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

**Decision: Petition to Establish a County Road (Buckhouse Lane)**

Acting Chair Curtiss reconvened the public hearing.

This is a consideration of a petition to establish "Buckhouse Lane from Blue Mountain Road to 4646 Buckhouse Lane in Packwest Addition/Buckhouse Flats, located in Section 2, Township 12 North, Range 20 West, Missoula County, Montana."

The reasons for the request are as follows: 1) This public roadway is required for access to Tracts B and C, Amended Plat of Packwest Addition and Lots D-1 and D-2 of Buckhouse Flats.

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The following landowners have been notified: R. Pruyn/D. Richardson, LLP; Vaeroy Enterprises, LLC; Commercial Properties, Inc.; Sharon L. Linjala; Big Flat Irrigation District; and Neil R. and Virginia Miller.

Greg Robertson stated that a site inspection was conducted by Commissioner Evans and himself on Tuesday, November 18, 2003. The road is currently installed. The purpose of the petition is to clean up a cloud on the title for the segment of Buckhouse Lane that crosses the irrigation ditch. When the property was originally condemned by the Federal government, the fee ownership of the property rested with the Millers, who are now deceased, so a quit claim cannot be obtained. To address the problem, the applicant has filed this petition to make Buckhouse Lane a County road. There are some issues that were identified during the site inspection that are outlined in a letter received from Edward and Sharon Linjala, who live on Blue Mountain Road and take their access from Buckhouse Lane. The applicant, represented by Tom Hanson of PCI, is aware of these issues. The road was installed as part of a subdivision. The developer recognizes the fact that there are several issues, such as cleaning up the ditches, installing shoulder rock and some other miscellaneous site improvements, that need to be done as part of the subdivision improvements. The developer is filing a guarantee with a surety bond to insure those improvements are done to Public Works' satisfaction. That is a separate issue from this petition process. The Board's approval will not constitute acceptance of maintenance on Missoula County's part until corrective action is taken on the existing road as part of the subdivision process. Based on that, Public Works recommends approval of the petition.

Acting Chair Curtiss asked if the approval should be contingent upon the items listed in the Linjalas letter being completed.

Greg Robertson stated all the Linjalas concerns were already being addressed. He and Mr. Hanson are working on the appropriate amount to be included in the surety bond to cover the cost of the improvements. There is also an issue with a road that has been cut across Buckhouse Lane by a contractor associated with the flooring business.

Colleen Dowdall stated those are associated with the filing of the subdivision plat, not with the creation of the right-of-way.

Greg Robertson stated that was correct. They are separate actions and will have separate acceptance processes.

Commissioner Evans stated that she concurred with Greg's report and recommendation.

Tom Hanson stated he understood there were some deficiencies identified and bonds will be issued to address the costs of those improvements. The question before the Board today is the creation of the County road right-of-way.

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

Commissioner Evans moved that the Board of County Commissioners approve the petition to establish "Buckhouse Lane from Blue Mountain Road to 4646 Buckhouse Lane in Packwest Addition/Buckhouse Flats, located in Section 2, Township 12 North, Range 20 West, Missoula County, Montana," based on the site inspection. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

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

#### THURSDAY, NOVEMBER 20, 2003

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Carey was out of the office November 20<sup>th</sup> and 21<sup>st</sup>. In the evening, Commissioner Evans attended a meeting of the Milltown Working Group held at St. Ann's Church in Bonner.

Claims List – Commissioners Evans and Curtiss signed the Claims List, dated November 19, 2003, with a grand total of \$18,408.40. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

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

Contract – The Commissioners signed a Professional Services Contract between Missoula County and James McKay, M.D., of Missoula Radiology Professional Services at Broadway Imaging Center, for the screening of mammograms for women under 50 (per Partnership Health Center's United Way Service Agreement). Compensation for services and other terms and conditions are set forth therein. This contract shall commence on an on-going basis beginning October 10, 2003, providing funding is available. The document was forwarded to Terry Delgadillo at PHC for further handling.

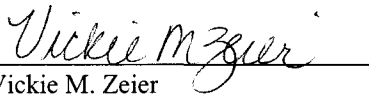
Request for Action and Letter – The Commissioners reviewed an extension request and signed a letter, dated November 20, 2003 to Walt Wick and Bill Wise of WW Realty, LLC (c/o Properties 2000) approving their request for an extension of the Buyer's Commitment from November 20, 2003 to December 5, 2003 for Lots 3 & 4, Block 11, Phase 2, Missoula Development Park. The documents were returned to Barb Martens in the Projects Office for further handling.

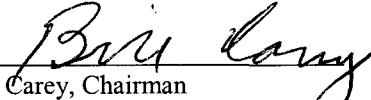
The minutes of the Administrative Meeting are on file in the Commissioners Office.



## FRIDAY, NOVEMBER 21, 2003

The Board of County Commissioners did not meet in regular session. Commissioner Curtiss was out of the office all day.

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

## MONDAY, NOVEMBER 24, 2003

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Curtiss was on vacation the week of November 24<sup>th</sup> through the 28<sup>th</sup>.

Claims List – Commissioners Carey and Evans signed the Claims List, dated November 17, 2003, with a grand total of \$17,513.80. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Evans signed the Claims List, dated November 19, 2003, with a grand total of \$13,730.63. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Evans signed the Claims List, dated November 20, 2003, with a grand total of \$237,506.75. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Evans signed the Claims List, dated November 24, 2003, with a grand total of \$31,090.40. The Claims List was returned to the Accounting Department.

Plat – The Commissioners signed the Plat for Beavertail Point, a five-lot subdivision located in the W½ of Section 20, T 16 N, R 15 W, PMM, Missoula County, a total area of 16.21 acres, with the owner/developer of record being Beavertail Properties, Inc.

Plat and Agreement – The Commissioners signed the Plat and Subdivision Improvements Agreement and Guarantee for River's Edge Homes, located in the SW¼ of Section 24, T 13 N, R 20 W, PMM, Missoula County, a total gross area of 4.82 acres, with the owner of record being Edgewater Development, Inc. The Improvements Agreement relates to several items as set forth therein; said improvements shall be completed no later than November 14, 2004. The estimated costs are \$155,988, and have been guaranteed by a Letter of Credit from Community Bank Missoula.

Request for Action and Letter – At their Planning Status meeting with the Office of Planning and Grants on November 24, 2003 the Commissioners reviewed an extension request and signed a letter (based on the recommendation of staff), dated November 26, 2003 to Gilbert Larson of Professional Consultants, Inc., approving his request for an extension for the filing of the phases of Canyon River Planned Variation and Subdivision. The plat and the revised phasing plan's new filing deadline is January 10, 2005.

Request for Action and Letter – At their Planning Status meeting with the Office of Planning and Grants on November 24, 2003 the Commissioners reviewed an extension request and signed a letter (based on the recommendation of staff), dated November 26, 2003 to Becky Weaver of Professional Consultants, Inc., approving her request for a Preliminary Plat Adjustment and Phasing Amendment of Hillcrest Heights Subdivision. The plat adjustment and revisions to the amendment are set forth therein.

## TUESDAY, NOVEMBER 25, 2003

The Board of County Commissioners met in regular session; a quorum of members was present. In the afternoon, Commissioner Evans participated in the Ribbon Cutting Ceremony at the new Lowe's Home Improvement Center on north Reserve.

Claims List – Commissioners Carey and Evans signed the Claims List, dated November 21, 2003, with a grand total of \$762.00. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Evans signed the Claims List, dated November 24, 2003, with a grand total of \$78,006.13. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Evans signed two (2) Claims Lists, dated November 25, 2003, with the following grand totals:

- 1) \$22,387.59; and
- 2) \$31,810.21.

The Claims Lists were returned to the Accounting Department.

Replacement Warrant – Chairman Carey examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Amy Chew as applicant for Missoula Area Education Cooperative Warrant #24826, issued November 10, 2003 on the Missoula County Claims Fund in the amount of \$404.22 (travel reimbursement), which was not received in the mail. No bond of indemnity is required.

ADMINISTRATIVE MEETING

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

Agreement – The Commissioners signed a Memorandum of Agreement between Missoula County and the City of Missoula for the provision of advocacy services (through the Crime Victims Advocate Program) for victims of crime education/training services regarding crime victims' needs and services. The total amount shall not exceed \$9,643.00, which is part of the match for the VOCA grant from the Board of Crime Control. The term will be July 1, 2003 through June 30, 2004. All other terms and conditions are set forth therein.

Criteria Form – The Commissioners reviewed and signed a Montana Department of Transportation ("MDOT") survey for the Secondary Roads Program – Project Selection Criteria for 2007 and Beyond. The criteria is ranked according to priority, as part of the MDOT's ongoing attempt to modernize their program. The document was returned to Public Works Director Greg Robertson for further signatures and handling.

Contract – The Commissioners signed a Professional Services Contract, dated November 25, 2003 between Missoula County and HDR Engineering, Inc. for services associated with the design of Blower VFDs (Variable Frequency Drives) and a back-up power system in connection with RSID 901 – [Lolo] Water Distribution and Wastewater Treatment System Miscellaneous Improvements. Compensation for services shall not exceed \$10,200.00. The completion date of the design tasks is February 28, 2004. All other terms and conditions are set forth therein. The document was returned to Public Works Director Greg Robertson for further handling.

Letter – The Commissioners signed a letter, dated November 25, 2003 to Kate Hampton, National Register Program Coordinator, Helena, Montana, supporting the nominations to the National Register of Historic Places for the following three properties located in Missoula: 1) The Missoula Mercantile Warehouse (221, 229 and 231 East Front Street); 2) the Catholic Block; and 3) the McCormick Neighborhood Historic District. These properties are important to the historic character of Missoula and are worthy of preservation.

Board Appointment – The Commissioners approved and signed a letter, dated December 2, 2003, to Gary A. Lewis, Seeley Lake, confirming his appointment as a member of the Seeley Lake Rural Fire District Board of Trustees to fill an unexpired term until the School Election is held in May of 2006.

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

#### WEDNESDAY, NOVEMBER 26, 2003

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

Claims List – Commissioners Carey and Evans signed the Claims List, dated November 25, 2003, with a grand total of \$90,380.24. The Claims List was returned to the Accounting Department.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

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

Agreement – Approved in October of 2003, the Commissioners signed an Agreement between Missoula County and Election Systems & Software, Inc. a Delaware corporation, for the purchase and license of voter tabulation equipment and related software and services. The total net amount of the equipment and services is \$570,900.00. All other terms and conditions are set forth therein. The document was returned to Vickie Zeier, Clerk and Recorder/Treasurer, for further signatures and handling.

Contract – The Commissioners signed a Professional Services Contract between Missoula County and D. Lower Construction, Inc. for the remodel of the Medical Records area of the Partnership Health Center in accordance with the floor plan A-1 by OZ Architects. The total amount shall not exceed \$13,708.00. The term will be December 15, 2003 through March 31, 2004. All other terms and conditions are set forth therein.

Agreement – Chairman Carey signed a Consultant Services Agreement, dated November 26, 2003 between Missoula County and HDR Engineering, Inc. to provide the project development and design for federal-aid project STPE 8199(65), Van Buren Pedestrian Bridge, located in Missoula, crossing the Clark Fork River at Van Buren Street. The total amount shall not exceed \$58,002.01. The Scope of Services contained therein sets forth the project completion schedule. The document was returned to Joe Jedrykowski at Public Works for further handling.

Resolution No. 2003-123 – The Commissioners signed Resolution No. 2003-123, dated November 26, 2003, a Budget Amendment for the Health Department (Water Quality District Fund) to reduce operations and increase personnel expenses using existing revenue. This amendment moves 0.5 FTE supervisor costs from Environmental Health (Health Fund) to WQD, and approves the addition of a 1.0 supervisor FTE to the Environmental Health division. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Other items included:

- 1) The Commissioners were given an update and projects status regarding Information Services.

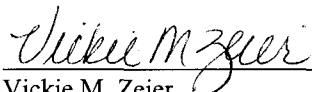
The Weekly Public Meeting was cancelled due to a lack of agenda items.

#### THURSDAY, NOVEMBER 27, 2003

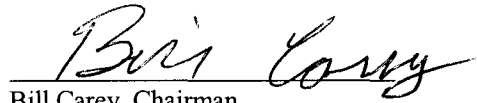
The Courthouse was closed for the Thanksgiving Day holiday.

FRIDAY, NOVEMBER 28, 2003

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



Bill Carey, Chairman  
Board of County Commissioners

## MONDAY, DECEMBER 1, 2003

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

Claims List – The Commissioners signed the Claims List, dated November 24, 2003, with a grand total of \$30,524.13. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated November 26, 2003, with the following grand totals:

- 1) \$14,335.86; and
- 2) \$37,356.85.

The Claims Lists were 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, Shirley E. Faust, for the month ending November 30, 2003.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 24 - Pay Date: November 28, 2003. Total Missoula County Payroll: \$885,586.12. The Transmittal Sheet was returned to the Auditor's Office.

Board Appointment – The Commissioners approved and signed a letter, dated December 2, 2003, to Paula Rosenthal, Missoula, confirming her appointment as the "2<sup>nd</sup> alternate member" of the Missoula County Park Board. Ms. Rosenthal's term will commence immediately and run through June 30, 2004, at which time she will be eligible for reappointment to the Board.

## TUESDAY, DECEMBER 2, 2003

The Board of County Commissioners met in regular session; all three members were present in the forenoon. Commissioner Curtiss left late in the forenoon for Butte to attend a MACo Retreat in the afternoon; Commissioner Evans was out of the office all afternoon.

Claims List – Commissioners Carey and Evans signed the Claims List, dated November 26, 2003, with a grand total of \$15,800.20. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Evans signed the Claims List, dated November 28, 2003, with a grand total of \$942.64. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Evans signed two (2) Claims Lists, dated December 1, 2003, with the following grand totals:

- 1) \$23,396.61; and
- 2) \$415.79.

The Claims Lists were returned to the Accounting Department.

Indemnity Bond – Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Standard Assurance Co., Portland, Oregon, as Principal for Frenchtown School District #40 Warrant #58552, issued October 20, 2003 on the Missoula County School District Fund in the amount of \$1,097.13 (for Long-Term Disability Premium 10/03), which cannot be found.

Indemnity Bond – Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Apple Education, Dallas, Texas, as Principal for Missoula County Public Schools A/P Warrant #91787, issued July 16, 2003 on the Missoula County High School General Fund in the amount of \$749.85 (for an audio sequencer), which cannot be found.

ADMINISTRATIVE MEETING

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

Agreement – The Commissioners signed a Memorandum of Agreement between Missoula County and Western Montana Addiction Services – Turning Point, for the coordination, facilitation, development and evaluation of the Flagship Project in Missoula County. The total amount shall not exceed \$46,056.64. The term will be October 1, 2003 through September 30, 2004. All other terms and conditions are set forth therein.

Other items included:

- 1) The Commissioners approved and adopted the Larchmont Golf Course Annual Budget, Capital Replacement and Debt Reduction Schedule, and Fees for 2004.
- 2) The Commissioners voted to charge the usual \$75.00 fee for a citizen petition that requests an extension of Hayes Creek Road to Blue Mountain Road. The documents were returned to Debbie Merseal in the Recording Office for further handling.
- 3) For informational purposes only, the Commissioners reviewed a memorandum from WW Realty, LLC, agreeing to extend the Buyers' commitment to December 10, 2003 (regarding property in the Missoula Development Park).
- 4) The Commissioners received an update regarding the current Public Defender Lawsuit. Two motions were made and passed: 1) Motion to have Norm Grosfield send a letter to Mr. Waterman as drafted (with copy and

cover letter to Brian Morrison); and 2) Missoula County will continue to retain Norm Grosfield to represent the County on this issue.

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

**WEDNESDAY, DECEMBER 3, 2003**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Curtiss was in Butte attending the MACo Retreat through Thursday forenoon.

Claims Lists – Commissioners Carey and Evans signed three (3) Claims Lists, dated December 2, 2003, with the following grand totals:

- 1) \$18,234.84;
- 2) \$1,631.54; and
- 3) \$28,022.21.

The Claims Lists were returned to the Accounting Department.

Monthly Report – Chairman Carey examined, approved and ordered filed the corrected copy of the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending November 30, 2003.

Monthly Report – Chairman Carey examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending November 30, 2003.

**CHIEF ADMINISTRATIVE OFFICER MEETING**

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

Contract – The Commissioners signed a Professional Services Contract, dated July 1, 2003 between Missoula County and Michael Curtis, M.D. as primary care staff physician at Partnership Health Center, on a 0.5 FTE basis (20 hours per week), plus after hours call. Compensation for services will be \$56,160.00. All other terms and conditions are set forth therein. The document was returned to Terry Delgadillo at PHC for further signatures and handling.

Request for Action – The Chairman Evans approved, and Chairman Carey signed an update to the December 2003 Edition of the Missoula County Disaster Plan, as well as the Public Health Annex and the new Terrorism Annex. No local money is required; approximately \$1,000 in grant money will be used to print copies. The documents were returned to Jane Ellis in Emergency Services for further handling.

Signature Page – The Commissioners reviewed and signed one (1) Claims Signature Page for the Larchmont Golf Course Accounts Payable Invoice Register dated December 2, 2003, in the amount of \$4,969.44. The Signature Page was returned to the County Auditor.

**PUBLIC MEETING – December 3, 2003**

The Public Meeting was called to order at 1:30 p.m. by Commission Chairman Bill Carey. Also present were Commissioner Barbara Evans, Deputy County Attorney Colleen Dowdall and County Public Works Director Greg Robertson. Commissioner Jean Curtiss was attending a MACo retreat in Butte.

**Pledge of Allegiance**

**Public Comment**

None

**Routine Administrative Actions**

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$721,453.91. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

**Hearing: Proposed Application to State CDBG Program on behalf of Nurture, Inc.**

Chairman Carey opened the public hearing.

Cindy Wulfekuhle, Office of Planning and Grants, presented the staff report.

Nurture, Inc. is asking the County to submit an application to the State of Montana for a Community Development Block Grant (CDBG) in the amount of \$400,000. The loan to Nurture will be \$375,000 and the balance will be used for administration of the project. Other sources of funding include a local bank loan of \$730,000 and a possible Missoula Area Economic Development Corporation (MAEDC) loan of \$195,000. Dick King, Director of MAEDC, is here to present additional detail about the company and the project. Eric Hanson, Regional Development Officer with the Montana Department of Commerce is also present, as is Griff Parker, Chairman and CEO of Nurture, Inc. Mark Menke from the First National Bank of Missoula is also present if the Board has any questions. The Commissioners will be asked to sign a Resolution authorizing submittal of the application.

Dick King, Director of MAEDC, stated that the fundamental purpose of the procedure is to show support for the new owners of Nurture, Inc., who have invested a lot of capital in the company, restored operations and built up production.

They are entering the market with OatVantage™ and some other products. This is a manufacturer of a value added process; more companies of this type are needed in Montana. Nuture has a great opportunity for success. The company and their investors are working with First National Bank, the Montana CDBG program and MAEDC to provide additional working capital. Since the Striker Partners purchased Nuture together with General Mills, they have created 15 new jobs and a few more will be created in the near future. There is a good chance the plant could increase its capacity when the project is completed, which would result in even more job creation. It brings new dollars to the community from outside of Montana. The total project cost is \$1.3 million. The commitments from First National Bank and MAEDC would be contingent on the County's decision to authorize an application to the State Department of Commerce and on subsequent approval of the application. The project meets and exceed the minimum eligibility threshold for a CDBG project. There is more than 50% low and moderate income benefit as documented by a survey of employees. He thanked the people at the company for their cooperation in putting this project together. He introduced Griff Parker, Chairman and CEO of Nuture, Inc.

Griff Parker stated that Nuture is an oat technology company and has spent a lot of time understanding how to break oat, a common ingredient, into a value added part. In human nutrition, it can lower cholesterol and it also has benefits for diabetics and in weight management. There is also strong interest in food application; in its concentrated form it can make food work better. It also has applications in the personal care market. He is very excited about the potential growth of the product and the company.

Chairman Carey asked what the County's financial liability was in supporting this CDBG application, if any.

Cindy Wulfekuhle stated the County is generally secured through a lien on property, inventory and/or machinery.

Dick King stated the company has an approximately \$300,000 mortgage outstanding on the property. The project would pay that mortgage off so that the bank would have first lien on land and buildings and the CDBG program would have second position. The value of the land and buildings substantially exceed the total of the bank and CDBG loans. In addition, there is all the equipment in the building that is available for collateral as well.

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

Commissioner Evans stated that she was very pleased to see Nuture rejuvenating. It is a good thing for the environment and the economy.

Commissioner Evans moved that the Board of County Commissioners approve sponsoring a State Community Development Block Grant (CDBG) proposal on behalf of Nuture, Inc. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

**Hearing: Kalberg Rezoning (C-RR1 to C-RR2) – Upper Miller Creek Road, Kerr Drive and Meadowwood**  
**Consideration: Kalberg Estates Subdivision (3 lots on 1.73 acres) – Upper Miller Creek Road and Meadowwood**

Chairman Carey opened the public hearing.

Liz Mullins, Office of Planning and Grants, presented the staff reports for both the rezoning and subdivision.

Dale and Connie Kalberg, represented by John Kellogg of PCI, are proposing to rezone the property located on the corner of Upper Miller Creek Road and Meadowwood Lane. The property is 1.73 acres in size. The subject property has access via Upper Miller Creek Road to the west, Meadowwood Lane to the south and Kerr Drive along the eastern boundary, all County maintained roads.

The property is currently split zoned a combination of C-RR1 south of the vacated road easement and C-RR2 north of the vacated road easement. The applicant is proposing to change the portion zoned C-RR1 (Residential – 1 dwelling unit per acre) to C-RR2 (Residential – 2 dwelling units per acre).

The 1997 Miller Creek Area Comprehensive Plan Amendment designates the property for residential use with a recommended density of 1 dwelling unit per acre. The Miller Creek Plan designates this area as one of three main neighborhoods in the plan area, where densities are recommended to fluctuate between one and six dwelling units per acre, depending on available infrastructure and natural resource constraints, appropriate where there are no environmental constraints that cannot be mitigated, and where the public services necessary to support high density uses are present. These services may include public transportation, public sewer and public open spaces.

The current zoning boundary coincides with a portion of Kerr Drive that connected back to Upper Miller Creek Road and physically divided the property into two differently zoned areas. This portion of Kerr Drive has since been vacated and connection is now southward at Meadowwood Lane. This rezoning would allow the zoning boundary to be placed along the existing Kerr Drive and along Meadowwood Lane to include the subject parcel entirely in one zoning district. The rezoning request is consistent with the entire block on the west side of Kerr Drive, to the north of the property and to the west of Upper Miller Creek Road.

This property is not within the Missoula Urban Transportation District. The Transportation District has requested expansion of the district into the Miller Creek area. Staff has recommended petitioning into the district as a condition of approval.

Two letters in opposition to increasing the density were received, which are attached to the staff report. Planning Board recommended approval of the rezoning request subject to staff's recommended condition.

The applicants are also proposing to create Kalberg Estates Subdivision, a 3 lot subdivision. The proposed lots range in size from 0.56 acres to 0.60 acres. The first condition of approval is that the rezoning of the southern portion of the tract to C-RR2 be adopted prior to final plat approval.

Each lot will be accessed off of Kerr Drive, along the eastern boundary of the property. The applicant has added a "No Access Strip" along Miller Creek Road and Meadowwood Lane to ensure that access will be from the secondary road, Kerr Drive. Montana Fish, Wildlife and Parks stated that this subdivision is very close to Ravenwood Park, a natural drainage with trees and shrubs which would be visited by wildlife. FWP recommends that a "living with wildlife" section be added to the covenants and has provided language to address the special significance of the area. This has been made a recommended condition of approval.

There are three variances being requested. The first is to vary from the requirement for boulevard sidewalks on Miller Creek Road, Meadowwood Lane and Kerr Drive. The Office of Planning and Grants recommends approval of the variance request. Public Works supports the variance due to the lack of existing facilities within proximity of the subdivision. The Miller Creek View Addition Subdivision is responsible for installation of walkways on this portion of Miller Creek Road. The applicant has included a statement on the plat waiving the right to protest an RSID/SID for future road improvements to Miller Creek Road, Meadowwood Lane and Kerr Drive, including non-motorized facilities.

The second variance request is to allow for reduced road width from 32 feet to approximately 24 feet for Miller Creek Road. OPG recommends approval of the variance request. Public Works noted that a 3 lot subdivision would not contribute sufficient traffic to warrant increasing the width of this existing public roadway. There is a recommended condition of approval that the applicant contribute to the transportation mitigation fund for Miller Creek Road improvements in the amount of \$1,800 per new lot, prior to final plat approval.

The last variance request is from curbs and gutters on Miller Creek Road and Meadowwood Lane. OPG recommends approval of the variance request. Public Works does not object to the variance request.

Conditions of approval not previously mentioned include revised language in the development covenant to require driveways in excess of 150 feet be reviewed and approved by the Missoula Rural Fire District prior to issuance of a Zoning Compliance Permit, not Building Permit issuance and that the language of the development covenant be revised from "Montana Weed Control Act" to "Montana County Weed Control Act."

A memo dated December 3, 2003 addresses the discussion at Planning Status and provides language for a revision to Condition 2, to include "transportation mitigation" before the word "fund." It also recommends deleting Condition 5 which would have required a provision in the covenants stating that the installation of wood burning stoves or fireplaces is prohibited. Because this property is within the Air Stagnation Zone, that prohibition is already a Health Department regulation.

John Kellogg, Professional Consultants, Inc., developer's representative, stated that, as Liz mentioned, the property is split between the C-RR1 and C-RR2 zoning districts. In 1959, the Kerr's subdivided their property and anticipated that it would be a subdivision of half acre lots continuing southward down Kerr Drive. At that time there was a connection to Miller Creek Drive that bisected this property. That connection was later vacated and the block was extended further south to Meadowwood Drive. On the original plat from 1959, the Kerrs show future development for this parcel continuing the pattern of half acre lots to the south. The reason for the C-RR1 zoning is that it fits the pattern of subdivisions to the east of this parcel. They feel the character of the neighborhood would be benefited by continuing the zoning and encompassing the entire block in the C-RR2 zoning district. Mountain Water is available to this parcel and the Kalberg's are proposing to extend water service to the subdivision. They have gained approval from the Health Board for individual septic systems. They do anticipate that in the near future, the property will be available for connection to the Miller Creek Sewer main. The Kalbergs are in agreement with the recommended conditions of approval. It is a well-thought out pattern of development for the block, continuing the pattern that was established at the north end of the block.

Lee Yelin stated he lived in the old Kerr home right across the street from this proposal. He has several concerns that have not been addressed. He is opposed to the subdivision for many reasons. No one has addressed the fact that there is a bus stop on the corner for grade school children. If all three lots are accessed to Kerr Drive, there will be a lot more congestion at the bus stop. The road is fairly dangerous as it is. Miller Creek closes regularly in bad weather and people use Meadowwood to turn around. He has seen three cars just this year in that lot that have slid off the road. He is also concerned about 3 septic on 1.6 acres. There are approximately 21 wells down gradient from the property. When septic are located above wells, the nitrate levels increase dramatically. The Peterson's have a well just on the boundary line of this property. He would feel a lot better if the proposal was for two homes. He has 1.3 across the street and if he were to try to rezone, it would be very difficult, because he does not have an arbitrary zoning line through his property. The east side of the road has all one acre lots. He purchased his property knowing that the zoning was one dwelling per acre. Again, he could live with two homes, but three would create congestion. Also, the lots are for sale for \$90,000 each and will more than likely be duplexes, so it could end up with six residences on the property. When the area is annexed into the City, which is coming soon, they could get a density bonus and have another dwelling on the property. Access off Kerr Drive at a bus stop is a problem. He has mentioned that at other meetings but no one seems concerned about it. There is also a wildlife issue. There are deer on the property every night and deer are killed on the road several times during the winter. He is concerned about the increased density and would feel better if it were restricted to single family dwellings and prefer two homes instead of three homes. At the hearing before the Planning Board, it was noted that they substantially met the zoning criteria, to provide certain services. They only have one service, Mountain Water. There is no transportation or City sewer. He did not understand how one service out of three or four was substantial compliance. Mr. Kellogg stated it was a benefit to the neighborhood to increase the density. It is a benefit to the developer, not the neighborhood. He lives across the street and it is not a benefit to him. He did not believe they should be allowed a variance for sidewalks because of the bus stop and grade school children. Miller Creek Road is very dangerous and is planned to be enlarged. He did not see why they should get a variance to not enlarge the road when they are increasing the density. This area has a steep hill coming down Miller Creek and in the winter when people turn right onto Meadowwood, they often end up in that property. Some improvement will need to be made, especially if the homes are anywhere near the road. Again, he strongly opposed the proposal.

Bruce Peterson stated he lived directly north of the proposal on Kerr Drive. He is strongly opposed to this rezoning and subdivision. He referred to the County Master Comprehensive Plan map which shows the area as being recommended for one dwelling unit per acre. He did not understand why the County spends money on Comprehensive Planning when they consistently change the zoning from the Master Plan. In 1991, he purchased his two acre parcel, because Mrs. Kerr could



not sell less than that. He only wanted one acre so he split his two acre parcel into two 1-acre parcels. They received a permit to do that from the Health Department on the basis that each parcel was used for only one single family dwelling. The area definitely has a rural feeling and he strongly opposes having more than one house per acre in this area.

John Kellogg stated that Mr. Yelin indicated the potential for higher density, however, the proposal is for three single family homes on this subdivision, that is what was applied for and what is proposed. The plans would have to be re-reviewed by the Health Department if they wanted to increase the density. Mr. Kalberg said there were some utility boxes and a telephone pole at the southwest corner of the property that have never received any damage from vehicles sliding on the slick roads. The protection of existing wells is a concern to the local and State Health Departments. They have completed the process with sanitarians and have received approval for placement of the septic systems as proposed. The placement will adequately protect the well water.

Colleen Dowdall stated that review of the ability to place a septic system on property is under the Health Department under a separate set of rules called the Sanitation in Subdivisions Act. The Commissioners are only approving the division of the land when they approve a subdivision. If a property fails to meet the Health Department standards, the plat cannot be filed. The processes are separate in Missoula County. Ultimately, if the Health Department denies septic approval, the plat does get filed.

Lee Yelin asked who would be liable if the Peterson's well's nitrate levels increase rendering the water undrinkable.

Colleen Dowdall stated a judge would have to determine liability.

Lee Yelin stated that the Peterson's would have to prove that the septic system impacted their well. He thought that the County had adopted a policy of a guideline of one septic system per acre.

Colleen Dowdall stated the County did not adopt a regulation to that effect. There was a study done but she did not recall any guidelines being established. The difference is having public water available to these lots. If there is a septic system and a well on the same property, generally an acre is needed. If there is no well, the size of the property can be reduced.

Lee Yelin stated that the developer's water could be protected, but not the neighboring wells.

Colleen Dowdall stated she was not saying that, but that was Mr. Yelin's argument.

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

Colleen Dowdall stated that her review of the proposal found that it is in substantial compliance with the Comprehensive Plan. Mr. Peterson said that the Comprehensive Plan map indicated this property should be developed at one dwelling unit per acre. In addition to the map is the text of the Comprehensive Plan. The text of the plan for this area states that if services are available, development can occur at a greater density. That is tied primarily to the septic issue, whether the land can be divided to a half acre and still support a septic system.

Lee Yelin asked again how it could meet substantial compliance if it only met one criteria. Liz stated at the Planning Board meeting that it substantially met the criteria and she mentioned three criteria; transportation, sewer and water. It only meets one for the water.

Colleen Dowdall stated that was Mr. Yelin's opinion, however, the Board of County Commissioners will make the final determination.

Liz Mullins stated that for a rezoning there are 12 criteria that are looked at. The first criteria is whether the zoning is compatible with the Comprehensive Plan. The Comprehensive Plan, in this case, states that higher density is appropriate, between one and six dwelling units per acre, in an area where there is available infrastructure. At the Planning Board hearing, she gave three examples of such infrastructure; public transportation, public sewer and public open space. She did not mention all services, just some examples that would be met. One of the conditions of approval is that the developer petitions into the Urban Transportation District. The area is within the Sewer Service Area for future connection. There is a park near the subject property. Public water is also an available service.

Chairman Carey stated that he was concerned about the potential dangers to school children at the bus stop.

Liz Mullins stated that she did not receive any adverse comments from the school district. No agencies objected to the sidewalk variance.

Lee Yelin stated the bus stops there every morning and every afternoon.

Colleen Dowdall stated that school district bus stops are not set in stone. The school district chooses safe places to stop. If this site becomes no longer safe, the school district will alter the bus stop in some way.

Greg Robertson stated Public Works works very closely with the school district. If there is a location that is of concern, Public Works responds with appropriate signage or finds an appropriate alternative location. He has only had one experience in the past three and a half years where that has been voiced as a concern. To his knowledge, that is no problem with this location.

Commissioner Evans moved that the Board of County Commissioners approve a Resolution of Intent to rezone that portion of Tract 2B of Certificate of Survey 3907, south of the vacated portion of Kerr Drive, from C-RR1 to C-RR2, subject to the recommended condition.

Chairman Carey stated there are 12 criteria looked at to justify a rezoning. It appears that the request does substantially comply with those criteria. He appreciated the concerns of the neighbors, but the Board must act within the laws they are governed by.

Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

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Colleen Dowdall stated that as this is a minor subdivision, it does not require a public hearing.

Chairman Carey asked if there were any public comments on the consideration of the Kalberg Estates Subdivision. He noted for the record that Mr. Yelin would make the same comments he made on the rezoning hearing.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(8)(A)(ii) of the Missoula County Subdivision Regulations which requires all rural subdivision within the Urban Growth Area with a lot frontage of less than 175 feet construct boulevard sidewalks for Miller Creek Road, Meadowwood Lane and Kerr Drive, based on the findings of fact contained in the staff report; approve the variance request from Article 3-2(3)(A) of the Missoula County Subdivision Regulations to allow for a reduced road width from 32 feet to 24 feet for Miller Creek Road, based on the findings of fact contained in the staff report; and approve the variance request from Section 3-2(7) of the Missoula County Subdivision Regulations to require installation of curbs and gutters on Miller Creek Road and Meadowwood Lane, based on the findings of fact contained 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 Kalberg Estates Subdivision, based on the findings of fact and subject to conditions of approval contained in the staff report and as revised by the memo dated December 3, 2003 from Liz Mullins. Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Lee Yelin asked if this was the final action or if there was any further administrative recourse.

Colleen Dowdall stated this is the final action by the Commissioners. There is a 30 day protest period contained in the Resolution of Intent to Rezone that begins upon first publication of the Notice of Intent to Rezone. The subdivision has been approved contingent on the zoning being adopted.

Lee Yelin asked if their administrative procedures were exhausted at the end of the 30 day protest period.

Colleen Dowdall stated that at the end of the 30 day period, if sufficient protests have not been received, the Commissioners will adopt a Resolution to Rezone. The plat still has to be approved for Sanitation in Subdivision by either the State or local health department.

Lee Yelin asked if the neighbors would be notified of that process.

Colleen Dowdall stated that is not a process that goes through the Commissioners Office. Mr. Yelin could contact the Health Department to see if they had any ability to do a formal notice. An appeal would be tied to the process before the Board of County Commissioners, not the process at the Health Department.

Chairman Carey asked what it would take to protest the rezoning.

Colleen Dowdall stated it would take a petition by 40% of the people in the zoning districts affected. As this involves two zoning districts, it would take 40% in each district. That has consistently been the County Attorney's Office interpretation in the past.

Lee Yelin stated that the only people affected were in the C-RR1 district.

Colleen Dowdall stated that has been the County Attorney's Office interpretation in the past. If Mr. Yelin wants a formal legal opinion, she could consult with Chief Civil Deputy County Attorney Mike Schestedt. The Resolution changes both districts; it takes land from one zoning district and adds it into the other zoning district.

#### **Kalberg Rezoning Condition of Approval:**

1. The applicant shall petition for inclusion into the Missoula Urban Transportation District prior to adoption of the rezoning. *Missoula Urban Transportation District recommendation, 1997 Miller Creek Area Comprehensive Plan Amendment.*

#### **Kalberg Estates Subdivision Conditions of Approval:**

##### **Zoning**

1. The rezoning of the southern portion of Tract 2B, COS 3907 to C-RR2 shall be adopted prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B).*

##### **Roads**

2. The applicant shall contribute to the transportation mitigation fund for Miller Creek Road improvements in the amount of \$1,800 per new lot, prior to final plat approval. *Subdivision Regulations Article 4-12 and Public Works recommendation.*

##### **Fire**

3. The language in Part C of the development covenant shall be revised to require driveways in excess of 150 feet be reviewed and approved by Missoula Rural Fire District prior to issuance of a Zoning Compliance Permit. *Subdivision Regulations Article 3-2(10) and OPG recommendation.*

##### **Noxious Weeds**

4. The language in Part A of the development covenant shall be revised from "Montana Weed Control Act" to "Montana County Weed Control Act." *Subdivision Regulations Article 3-1(1)(B) and OPG recommendation.*

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**Wildlife**

5. The development covenant shall include a section on Living with Wildlife and contain the following language, subject to review and approval by OPG, prior to final plat approval:

- Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, bears, mountain lions, skunks and raccoons. Contact the Montana Fish, Wildlife and Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife."
- There is the **potential for vegetation damage by wildlife**, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be aware of this potential damage. They should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Homeowners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- **Do not feed wildlife** or offer supplements (such as salt blocks), attractants or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against State law (MCA 87-3-130) to provide supplemental feed attractants if it results in a "concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners should be aware that deer might occasionally attract mountain lions to the area.
- **Pets** must be confined to the house, in a fenced yard or in an outdoor kennel area and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current State law (MCA 87-3-124) it is illegal for dogs to chase hooved game animals and the owner may also be held guilty.
- **Garbage** should be stored in secure bear-resistant containers or indoors to avoid attracting animals such as bears, raccoons, dogs, etc. Garbage cans should not be placed outdoors until the morning of garbage pick-up.
- **Pet food** should be stored indoors or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, etc. When feeding pets, do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
- **Barbecue grills** should be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on the grill, lid, etc., can attract bears and other wildlife.
- Consider **boundary fencing** that is no higher than 3.5 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence.
- **Gardens** can attract wildlife. Keep the produce picked because rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries. Fruit trees can attract wildlife such as deer and bears. Keep ripe fruit picked and do not allow rotten fruit to collect under trees. Consider fencing to keep deer out.
- **Bird feeders** attract bears. Consider not using them in this area between the months of April through October. If used, bird feeders should: a) be suspended a minimum of 20 feet above ground level; b) be at least 4 feet from any support poles or points; and c) should be designed with a catch plat located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- **Compost piles** can attract skunks and bears and should be avoided in this subdivision. If used, they should be kept indoors or built to be wildlife-resistant. *Subdivision Regulations Article 4-1(12), 3-13 and FWP recommendation.*

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

Resolution No. 2003-124 – Following the Public Meeting, the Commissioners signed Resolution No. 2003-124, dated December 3, 2003, authorizing the submittal of a Community Development Block Grant ("CDBG") application to the Montana Department of Commerce on behalf of Nurture, Inc. Should the CDBG application be funded, Nurture will retain jobs and create new jobs, most of which will be filled by low to moderate income individuals.

**THURSDAY, DECEMBER 4, 2003**

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

Claims List – Commissioners Carey and Evans signed the Claims List, dated December 2, 2003, with a grand total of \$9,305.60. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Evans and Curtiss signed the Claims List, dated December 4, 2003, with a grand total of \$40,000.00. The Claims List was returned to the Accounting Department.

**ADMINISTRATIVE MEETING**

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

Contract – The Commissioners signed a Professional Services Contract with HKM Engineering, Inc. for a remodeling of a stretch of the Clark Fork River (approximately 5,000 feet centering on the Reserve Street Bridge) to determine if the base flood elevation as calculated by FEMA is correct. The total amount shall not exceed \$10,000. All other terms and conditions are set forth therein. The document was returned to Jeff Schalow at the Office of Planning and Grants for further signatures and handling.

Other items included:

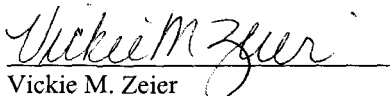
- 1) The Commissioners approved several Board appointments. (RESCINDED: See December '16, 2003 Journal entry).

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

**FRIDAY, DECEMBER 5, 2003**

The Board of County Commissioners met in regular session; all three members were present in the afternoon. In the forenoon, Commissioner Curtiss traveled to Ravalli County with Rosalie Cates of MCDC (MT Community Development Corp.) to meet with the County Commissioners there regarding Regional Development Corporations.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 18 - Pay Date: September 5, 2003. Total Missoula County Payroll: \$992,972.98. The Transmittal Sheet was returned to the Auditor's Office.

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

**MONDAY, DECEMBER 8, 2003**

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

Claims List – The Commissioners signed the Claims List, dated December 2, 2003, with a grand total of \$35,419.18. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated December 3, 2003, with a grand total of \$7,411.69. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated December 4, 2003, with a grand total of \$17,550.98. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated December 5, 2003, with the following grand totals:

- 1) \$76,447.40; and
- 2) \$18,441.19.

The Claims Lists were returned to the Accounting Department.

Resolution No. 2003-125 – The Commissioners signed Resolution No. 2003-125, dated December 8, 2003, a Resolution to Create Public Highways, as follows: "Buckhouse Lane from Blue Mountain Road to 4646 Buckhouse Lane in Packwest Addition/Buckhouse Flats located in Section 2, T 12 N, R 20 W, Missoula County, Montana."

Agreement – Chairman Carey signed a Memorandum of Agreement, dated November 20, 2002, between the Missoula County Park Board (the "Board") and the Swan Valley Elementary School for assistance with park development. Funded and approved in the Fall of 2002, the Board agrees to provide up to \$3,000 in matching funds from the Capital Matching Fund Program (Fall FY03), and must be spent by November 30, 2004. The document was returned to Lisa Moisey, County Parks Coordinator, for further handling.

Agreement – Chairman Carey signed a Memorandum of Agreement, dated November 26, 2003, between the Missoula County Park Board (the "Board") and Lolo Community Park – Lolo Peak Little League for assistance with park development. The Board agrees to provide up to \$3,000 in matching funds from the Capital Matching Fund Program (Fall FY04), and must be spent by November 25, 2005. The document was returned to Lisa Moisey, County Parks Coordinator, for further handling.

Closeout Certification – Chairman Carey signed a Final Closeout Certification, dated December 8, 2003, for the Montana Department of Commerce Contract #M2001-SG300105 (Carole Graham Home) – HOME Program Grant. There are no unpaid costs or third party claims remaining against the HOME grant, and there are no outstanding labor claims. The document was returned to Jenifer Blumberg in the Office of Planning and Grants for further signatures and handling.

Request for Action and Letter – At their Planning Status meeting with the Office of Planning and Grants on December 8, 2003 the Commissioners reviewed and signed a letter, dated December 8, 2003 to Nick Kaufman, WGM Group, Inc., approving his request for an amendment of the Canyon Creek Village Subdivision Phasing Plan. The request is to move the lot designated P1, the community facilities lot located in the southern portion of the park, from Phase 5 to a new Phase 13. This will allow the application to plat Lot P1 after the entire development is built and a more clear understanding of the use of the lot is possible. The Phasing Plan deadlines are set forth therein.

TUESDAY, DECEMBER 9, 2003

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

Claims List – The Commissioners signed the Claims List, dated December 8, 2003, with a grand total of \$21,510.18. 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, Michael McMeekin, for the month ending November 30, 2003.

#### ADMINISTRATIVE MEETING

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

Agreement – Chairman Carey signed a School Year 2003-2004 Agreement between the Missoula County Public Schools and the Missoula Office of Planning and Grants for the implementation of the Project Success Grant (Grants to Reduce Alcohol Program). The total amount shall not exceed \$20,181.00, which will pay for a Grants Administrator for supervision and technical assistance, as well as the Forum Coordinator (.25 FTE) to develop a community-wide strategy to reduce alcohol consumption by 14-16 year olds. The term will be October 1, 2003 through September 30, 2004. All other terms and conditions are set forth therein. The document was returned to Peggy Seel in OPG for further signatures and handling.

Agreement – The Commissioners signed an Agreement between Missoula County and Local Unit Number One of the Montana Public Employees Association ("MPEA") (Health Department Unit), for the purpose of defining the wages, hours and other working conditions of the employees of Missoula County who are represented by the MPEA. The term will be July 1, 2003 through June 30, 2005. All terms and conditions are set forth therein. The document was returned to Steve Johnson in Human Resources for further handling.

Encroachment Permit – The Commissioners signed a Missoula County Encroachment Permit, dated December 1, 2003 for Gary W. and Lynne A. Nelson of 3520 Trails End Road to encroach upon a portion of County right-of-way (Trails End Road). The property is located in the NE¼ of Section 25, T 12 N, R 20 W, and the SW¼ of Section 19, T 12 N, R 19 W, PMM, Missoula County. The encroachment shall be limited to an underground water line.

Agreement – The Commissioners signed one (1) Sanitary Sewer Grant Program Agreement for Partial Assistance to Owner-Occupied Households Secured by Real Property, dated December 4, 2003, with Theresa A. Martinosky, 304 Speedway Avenue, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. All sewer development fees and on-site connection costs and fees are as set forth therein.

Subordination of Mortgage – Chairman Carey signed a Subordination of Mortgage, dated December 9, 2003, relating to a Subordinate Deed of Trust (dated November 27, 2000) between Missoula County and Arthur Lee and Paul Fransine Dykstra ("Borrowers"), 3010 Flynn Lane. Flagstar Bank has agreed to make a loan to the Borrowers in the amount of \$115,000.00. The document was returned to Jenifer Blumberg in the Office of Planning and Grants for further handling.

Subordination Agreement – Chairman Carey signed a Subordination Agreement, dated December 9, 2003 between Gretchen A. Webster of 2325 Strand Avenue, and Missoula County, holder of a second-position Deed of Trust and a fourth-position security interest on this real property described as Lots 14 and 15 in Block 6 of Car Line Addition. Wells Fargo Home Mortgage has agreed to loan Ms. Webster (a First-Time Homebuyer who is refinancing) money to be secured by said property; Missoula County has agreed to subordinate its Deed of Trust and other security interest to this new loan. The document was returned to Jenifer Blumberg in the Office of Planning and Grants for further signatures and handling.

Board Appointments Rescinded – Due to the appointments not being noticed on their Administrative Meeting Agenda of December 4, 2003, the Commissioners rescinded the Board Appointments made on that date (as per the attachment on file with the 12/4/03 Meeting Agenda.)

Other items included:

- 1) The Commissioners moved to forgive the second one-quarter payment (\$122,500) of a Community Development Block Grant loan to the Missoula Children's Theatre. Commissioner Evans is working with Montana Congressional Delegates for future grants for MCT.
- 2) The Commissioners were given an update on several road issues by Public Works Director Greg Robertson.
- 3) The Commissioners moved to postpone their decision to Monday, December 15<sup>th</sup> on the offer by WW Realty to purchase Lots 3 & 4, Block 11, Phase 2, Missoula Development Park. Senior County staff will work with both parties to negotiate a compromise to present to the BCC.

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

WEDNESDAY, DECEMBER 10, 2003

The Board of County Commissioners met in regular session; all three members were present in the afternoon. In the forenoon, Commissioner Curtiss and Rosalie Cates of MCDC went to Superior to meet with the Mineral County Commissioners regarding Regional Development Corporations. At noon, Commissioner Curtiss gave the welcome at the Rural Development Town Meeting being held at the Missoula Children's Theatre.

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Claims Lists – Commissioners Evans and Carey signed four (4) Claims Lists, dated December 8, 2003, with the following grand totals:

- 1) \$26,596.25;
- 2) \$4,067.06;
- 3) \$3,380.88; and
- 4) \$28,824.99.

The Claims Lists were returned to the Accounting Department.

Claims Lists – Commissioners Evans and Carey signed two (2) Claims Lists, dated December 9, 2003, with the following grand totals:

- 1) \$1,000.00; and
- 2) \$1,179.62

The Claims Lists were returned to the Accounting Department.

Plat – The Commissioners signed the Plat for Big Bear Addition, a three-lot minor subdivision located in the E½ of Section 18, T 14 N, R 20 W, PMM, Missoula County, a total area of 114.99 acres, with the owners of record being Dennis and Phyllis Kaye Sauter.

Closing Documents – Chairman Carey signed a County Certificate, dated December 10, 2003, pertaining to \$7,210,000 Airport Revenue Refunding Bonds, Missoula County Airport Authority, Missoula, Montana, consisting of: 1) \$460,000 Airport Revenue Refunding Bonds (Tax Supported), Series 2003A; 2) \$3,160,000 Airport Revenue Refunding Bonds (Limited Tax Supported), Series 2003B; and 3) \$3,590,000 Airport Revenue Refunding Bonds (PFC Supported), Series 2003C. The Certificate states that Resolution No. 2003-119, adopted November 5, 2003, has been and is in full force and effect since its adoption. The document was returned to Celia at Dorsey & Whitney for further handling.

Tax Abatement Requests – At the Clerk & Recorder's Departmental Meeting with Vickie Zeier, held on December 10, 2003, the Commissioners approved requests and/or letters regarding the following:

- 1) To approve a request from Jeffrey & Maryann Pearson, St. Paul, MN to refund penalty and interest for real estate tax ID #23708;
- 2) To approve a request from Anna Mae Hughes to refund penalty and interest for real estate tax ID #506554;
- 3) To approve a request from Richard E. Moore, D.D.S., to refund penalty and interest for real estate tax ID #380705;
- 4) To approve a request from Ben Riley to refund penalty and interest for mobile home tax ID #90264770;
- 5) To approve a request from Zoe Ann Stoltz to waive penalty and interest for mobile home tax ID #90353540;
- 6) To approve a request from Betty Shubert to refund penalty and interest for mobile home tax ID #90287200;
- 7) To approve a request from Bruce Thisted, Frenchtown, MT to waive the 2002 Frenchtown correction mill levy for Taxpayer ID #1133506; and
- 8) To approve a request from Joe & Mary Ellen Harlan, Huson, MT to waive the first half of the 2002 Frenchtown correction mill levy for Taxpayer ID #2361003.

#### **PUBLIC MEETING – December 10, 2003**

The Public Meeting was called to order at 1:30 p.m. by Commission Chairman Bill Carey. Also present were Commissioner Barbara Evans, Commissioner Jean Curtiss, Chief Civil Deputy County Attorney Mike Sehestedt and County Public Works Director Greg Robertson.

#### **Pledge of Allegiance**

#### **Public Comment**

None

#### **Routine Administrative Actions**

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$332,310.03. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### **Hearing: Petition to Abandon a Portion of DeSmet Road**

Chairman Carey opened the hearing.

Greg Robertson presented the staff report.

This is a petition to abandon a portion of "DeSmet Road from the intersection of DeSmet Road and DeSmet Road at the Section Corner of 26, 27, 34 and 35 for approximately 485 feet to the east as shown in County Road Book 1, located in the southwest one-quarter of Section 26, Township 14 North, Range 20 West, Missoula County, Montana."

The reasons for the request are as follows:

1. To make travel between Expressway and DeSmet Road easier and safer.
2. Alleviate intersection confliction at Expressway and DeSmet Road.
3. Right-of-way has no value to Missoula County.

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The following landowners have been notified: Gary J. Gallagher Revocable Living Trust; Entech, Inc.; EBMC, LLC; Johnson Brothers Contracting, Inc.; Tim Mellgren; and George and Dianne Grutsch.

This was part of the Expressway project done a few years ago by the County. This is surplus right-of-way that should be abandoned and made part of a subdivision by the Grutschs which was recently approved. This petition will clear title to the property.

Commissioner Curtiss stated the drawing looks like only part of the road is being abandoned.

Greg Robertson stated that DeSmet Road, where it makes a turn into Expressway, is existing right-of-way. This particular section is parallel right-of-way where DeSmet Road used to be but is no longer.

Rick Reap stated he was present on behalf of the Gallagher Trust. Their concern was that the initial drawing cut off a portion of the right-of-way necessary to make a right turn. He spoke with Greg and the drawings were modified. They are satisfied with the proposal as modified.

Mike Sehestedt stated that a site inspection would need to be scheduled before a decision could be made. The hearing can be left open. After the site inspection, a report will be made to the Board so they can make a decision on the petition.

Chairman Carey recessed the hearing and stated that a site inspection by the County Public Works Director or his designee and one County Commissioner would be scheduled. They will report back to the Board and a decision will be made at the next Public Meeting, Wednesday, December 17, 2003.

#### **Hearing: Petition to Rename DeSmet Road**

Chairman Carey opened the public hearing.

Greg Robertson presented the staff report.

This is a petition to rename "DeSmet Road, located in Section 26, Township 14 North, Range 20 West, Missoula County, Montana, to Interstate Place."

The following landowners have been notified: Gary J. Gallagher Revocable Living Trust; Entech, Inc.; EBMC, LLC; Johnson Brothers Contracting, Inc.; Tim Mellgren; and George and Diane Grutsch.

This name change is for the east/west segment of DeSmet Road, from Butler Creek Road to Expressway. The north/south segment will remain DeSmet Road.

Mike Sehestedt stated that the Board could make a decision on renaming the road today; a site inspection does not need to be conducted.

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

Commissioner Evans moved that the Board of County Commissioners approve the petition to rename "DeSmet Road, located in Section 26, Township 14 North, Range 20 West, Missoula County, Montana, to Interstate Place." Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### **Hearing: Request to Alter Bitterroot Road, Bitterroot High Water Road and Missoula County Road Plat Book 1 Road**

Chairman Carey opened the public hearing.

Greg Robertson presented the staff report.

This is a petition to alter "Bitterroot Road, Bitterroot High Water Road and Missoula County Road Plat Book 1 Road, located in Sections 11 and 14, Township 12 North, Range 20 West, Missoula County, Montana."

The reasons for the request are as follows:

1. These three roads are not locatable on the ground.
2. Relocating these roads moves them to an existing roadway easement.

The following landowners have been notified: Maloney Properties, LLC and Artie and Kay Dorris.

These roads are associated with the Maloney Ranch development that is currently making it way through the subdivision review process. The petition is to alter and realign all three roads to fit the overall development plan of the Maloney Ranch development. This will make all the right-of-ways match and become one right-of-way.

Chairman Carey recessed the hearing and stated that a site inspection by the County Public Works Director or his designee and one County Commissioner would be scheduled. They will report back to the Board and a decision will be made at the next Public Meeting, Wednesday, December 17, 2003.



**Hearing: Request to Alter a Portion of Lower Miller Creek Road**

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Chairman Carey opened the public hearing.

Greg Robertson presented the staff report.

This is a petition to alter "Lower Miller Creek Road, located in Section 11, Township 12 North, Range 20 West, Missoula County, Montana."

The reason for the request is as follows: The roadway is going to be improved.

The following landowners have been notified: Maloney Properties, LLC and Artie Dorris.

This petition is associated with the previous request in that it is associated with the Maloney Ranch Phase VIII development. Construction plans for the realignment of Miller Creek Road will be submitted to Public Works in the near future.

Mike Sehestedt stated that the old road comes out of the City limits at one point and the new road goes in at another.

Greg Robertson stated that this fits with their development plan.

Commissioner Curtiss stated that they would have to go through the City to alter the portion of the right-of-way that lies within the City limits.

Greg Robertson stated that was correct.

Commissioner Curtiss asked if this was an existing road.

Greg Robertson stated it is an existing alignment and it will be altered to fit their development proposal.

Mike Sehestedt stated that this alteration should be granted conditionally upon construction of the new road and its acceptance by the County.

Greg Robertson stated that was correct.

Chairman Carey recessed the hearing and stated that a site inspection by the County Public Works Director or his designee and one County Commissioner would be scheduled. They will report back to the Board and a decision will be made at the next Public Meeting, Wednesday, December 17, 2003.

**Hearing: Request to Abandon an Unnamed Road in Road Book 1 (Golden West Addition No. 1, Lot 16)**

Chairman Carey opened the public hearing.

Greg Robertson presented the staff report.

This is a petition to abandon "an unnamed road in Road Book 1, located in Golden West Addition No. 1, Lot 16, in the southwest one-quarter of Section 14, Township 13 North, Range 20 West, Missoula County, Montana."

The reasons for the request are as follows:

1. It does not physically exist.
2. The location is impractical – the intersection with Mullan Road is in a dangerous location.
3. It interferes with the proposed subdivision of Lot 16.

The following landowners have been notified: Avi and Jodi Bardin.

The petition presented is actually to alter a County road but there is a statement on the exhibit that this road is to be abandoned. He was not clear what the actual request was for.

Ron Ewart, Eli & Associates, stated that this is in relation to a subdivision recently approved for Lot 16 of the Golden West Addition. The unnamed road, which does not exist, runs between Douglas Drive and Hayes Drive. The intent is to abandon the road, however an associate at Eli & Associates inadvertently used the incorrect form. The landowners that signed the petition were under the impression that the road was to be abandoned. It does not exist on the ground and it is not needed. To clarify for the record, the request is to abandon that road through Lot 16.

Mike Sehestedt stated the published notice of action specifies abandonment and the error on the petition has been corrected on the record, therefore all jurisdictional prerequisites have been met.

Chairman Carey recessed the hearing and stated that a site inspection by the County Public Works Director or his designee and one County Commissioner would be scheduled. They will report back to the Board and a decision will be made at the next Public Meeting, Wednesday, December 17, 2003.

Commissioner Curtiss stated that this right-of-way could provide access to Mullan Road.

Ron Ewart stated that from the end of Douglas Drive, someone could ride their bike through Glacier Estates to Mullan Road. Also, an emergency vehicle will have the right to drive through from Mullan Road to Douglas Drive, once a small piece of right-of-way is obtained. There is a two year option on obtaining this small piece of right-of-way for \$5,000 which he is pursuing.

There being no further business to come before the Board, the Commissioners were in recess at 1:45 p.m.

**THURSDAY, DECEMBER 11, 2003**

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

Claims List – The Commissioners signed the Claims List, dated December 9, 2003, with a grand total of \$47,790.90. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated December 10, 2003, with a grand total of \$428,917.85. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated December 11, 2003, with a grand total of \$11,199.05. The Claims List was returned to the Accounting Department.

**ADMINISTRATIVE MEETING**

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

Agreement – The Commissioners signed one (1) Sanitary Sewer Grant Program Agreement for Partial Assistance to Owner-Occupied Households Secured by Real Property, dated December 8, 2003, with Patricia Rose and Ciarra Crystal, 337 Speedway Avenue, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. All sewer development fees and on-site connection costs and fees are as set forth therein.

Resolution No. 2003-126 – The Commissioners signed Resolution No. 2003-126, dated December 11, 2003, a Budget Amendment for the Office of Planning and Grants in the amount of \$1,000,000 for the EPA Brownfields Cleanup RLF. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Resolution No. 2003-127 – The Commissioners signed Resolution No. 2003-127, dated December 11, 2003, a Budget Amendment for the Health Department in the amount of \$49,168, reflecting the increase in the Frenchtown Contract. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-013 for the Health Department, reflecting \$500 for a needed separate code.

Request for Action – Chairman Carey reviewed and signed the cover page of the annual March Against Homelessness Annual Progress Report to HUD. Missoula County, which was granted \$105,729 for a three-year period, contracts with the YWCA to operate the transitional housing project for homeless women and their children. The document was returned to Kristina Swanson in the Office of Planning and Grants for further handling.


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

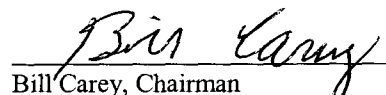
**FRIDAY, DECEMBER 12, 2003**

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

**Site Inspections**

In the forenoon, Commissioner Curtiss accompanied Chuck Wright, Assistant Public Works Director, on site inspections for four of the road requests heard at the December 10, 2003 Public Meeting.

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

**MONDAY, DECEMBER 15, 2003**

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

Claims List – The Commissioners signed the Claims List, dated December 11, 2003, with a grand total of \$9,034.26. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated December 12, 2003, with a grand total of \$29,091.69. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated December 15, 2003, with a grand total of \$14,183.64. The Claims List was returned to the Accounting Department.

Plat – The Commissioners signed the Plat for Clarke Estates, a two-lot summary subdivision of Tract A, DE1826, located in the SE¼ of Section 23, T 15 N, R 20 W, PMM, Missoula County, a total area of 16.69 acres, with the owners/developers of record being Conald L. and Clara I. Clarke.

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Agreement – Chairman Carey signed a Memorandum of Agreement, dated November 26, 2003, between the Missoula County Park Board (the “Board”) and the Frenchtown Elementary School for assistance with park development. The Board agrees to provide up to \$3,000 in matching funds from the Capital Matching Fund Program (Fall FY04), and must be spent by November 25, 2005. The document was returned to Lisa Moisey, County Parks Coordinator, for further handling.

Agreement – Chairman Carey signed a Memorandum of Agreement, dated November 26, 2003, between the Missoula County Park Board (the “Board”) and the Lolo Organizing Opportunities for Pleasant Surrounding (“LOOPS”) for assistance with park development. The Board agrees to provide up to \$1,670 in matching funds from the Capital Matching Fund Program (Fall FY04), and must be spent by November 25, 2005. The document was returned to Lisa Moisey, County Parks Coordinator, for further handling.

Letter – At their Planning Status meeting with the Office of Planning and Grants on December 15, 2003 the Commissioners reviewed and signed a letter, dated December 15, 2003 to Nick Kaufman, WGM Group, Inc., approving his request to amend Condition 8 for Phantom Hills Subdivision. The amendment relates to the planting, irrigation, and maintenance of boulevard trees, as set forth therein.

**TUESDAY, DECEMBER 16, 2003**

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

Claims List – The Commissioners signed the Claims List, dated December 16, 2003, with a grand total of \$42,057.78. The Claims List was returned to the Accounting Department.

Replacement Warrant – Chairman Carey examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming AFLAC, Columbus, GA, as applicant for Accounting Warrant #23901, issued June 12, 2003 on the Missoula County Payroll Fund in the amount of \$978.61 (for Invoice #221997 - Premiums), which was not received in the mail. No bond of indemnity is required.

**ADMINISTRATIVE MEETING**

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

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 25 - Pay Date: December 12, 2003. Total Missoula County Payroll: \$923,655.10. The Transmittal Sheet was returned to the Auditor's Office.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-014 for the Health Department, reflecting \$50.00 for a needed object code.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-017 for the Office of Planning and Grants, reflecting \$2,100 in line items needed for the Project Success Grant.

Work Plan – The Commissioners reviewed and signed a Missoula County Department of Emergency Services (“DES”) Statement of Work for Federal Fiscal Year 2003-2004, a standard form required to receive approximately \$50,000 from FEMA in support of the DES function. The Commissioners also signed a Payroll Authorization Form for Jane Ellis, Director of Emergency Services. Ms. Ellis' salary is changed from \$32.30/hour to \$32.95/hour. The documents were returned to Jane Ellis for further handling.

Resolution No. 2003-129 – The Commissioners signed Resolution No. 2003-129, dated December 16, 2003, accepting property from Richard Jochinsen for public road and all other purposes, located in a portion of the NW¼ of Section 25, T 15 N, R 22 W, PMM, Missoula County (for the Beeler Road Project in Huson).

Easement – The Commissioners signed an Easement, dated December 16, 2003 from Missoula County to Richard Jochinsen, Huson, for a well and waterline after the road easement for Beeler Road has been established (see previous journal entry).

Signature Page – The Commissioners reviewed and signed one (1) Claims Signature Page for the Larchmont Golf Course Accounts Payable Invoice Register dated December 15, 2003, in the amount of \$12,461.59. The Signature Page was returned to the County Auditor.

Channel Survey – The Commissioners approved (with Barbara Evans voting no) a request from the Office of Planning and Grants for funding in the amount of \$3,750 to obtain eight underwater cross-sections along the Clark Fork River. These are needed to complete a re-modeling of the river along an approximately 5,000 foot stretch roughly centering on the Reserve Street Bridge, and will determine the base flood elevation to assess flooding risks. The total cost of the project is estimated to be \$7,500; the City of Missoula has been asked to fund the remaining \$3,750.

Board Appointments – The Commissioners approved the following board appointments:

- 1) Reappointment of Suzanne Peterson, Missoula, to a three-year term as a member of the Missoula Aging Services Governing Board. Ms. Peterson's term will run through December 31, 2006;
- 2) Reappointment of Daniel P. Doyle, Missoula, to a three-year term as a member of the Missoula Aging Services Governing Board. Mr. Doyle's term will run through December 31, 2006;
- 3) Reappointment of Gladys Hardin, Missoula, to a three-year term as a member of the Missoula Aging Services Governing Board. Ms. Hardin's term will run through December 31, 2006;

- 4) Reappointment of Thomas A. Morarre, Lolo, to a two-year term as a member of the City-County Animal Control Board. Mr. Morarre's term will run through December 31, 2005; and
- 5) Reappointment of Nancy McKiddy, Missoula, to a four-year term as a member of the Missoula Urban Transportation District Board. Ms. McKiddy's term will run through December 31, 2007.

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

**WEDNESDAY, DECEMBER 17, 2003**

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

Claims Lists – The Commissioners signed two (2) Claims Lists, dated December 15, 2003, with the following grand totals:

- 1) \$54,575.51; and
- 2) \$16,208.28.

The Claims Lists were returned to the Accounting Department.

Claims Lists – The Commissioners signed six (6) Claims Lists, dated December 16, 2003, with the following grand totals:

- 1) \$54,322.88;
- 2) \$3,980.00;
- 3) \$3,015.50;
- 4) \$293.79;
- 5) \$4,465.99; and
- 6) \$16,592.91.

The Claims Lists were returned to the Accounting Department.

**CHIEF ADMINISTRATIVE OFFICER MEETING**

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

Contract – The Commissioners signed a Contract, dated December 17, 2003 between Missoula County and Professional Consultants, Inc. for engineering and surveying services to construct approximately 900 feet of West Harrier within Phase 3B, Missoula Development Park. The estimated amount of the project is \$33,402.00. All other terms and conditions are set forth therein. The document was returned to Barb Martens in the Projects Office for further handling.

Resolution No. 2003-128– The Commissioners signed Resolution No. 2003-128, dated December 17, 2003, a Resolution of Intent to rezone a portion of the property (Kalberg) described as COS 3907 Tract B2, located in Section 7 and 12, T 12 N, R 19 W, PMM, from C-RR1 (Residential – 1 dwelling unit per 1 acre) to C-RR2 (Residential – 2 dwelling units per 1 acre). The property is located on the corner of Miller Creek Road, Meadowwood Lane, and Kerr Drive.

Resolution No. 2003-132 –, The Commissioners signed Resolution No. 2003-132, dated December 17, 2003, acknowledging the 31-year contribution of the Missoula Children's Theatre (MCT) to children across the globe and the significance of its impact on the Missoula economy and expressing support for a request to the Federal government for project development funds.

Resolution No. 2003-130 – The Commissioners signed Resolution No. 2003-130, dated December 17, 2003, a Budget Amendment for the Sheriff/Detention Department, reflecting \$74,643 for medical reimbursement received from MHP, Ravalli, and Madison Counties for Davis. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Resolution No. 2003-131 – The Commissioners signed Resolution No. 2003-131, dated December 17, 2003, a Budget Amendment for the Sheriff/Detention Department, reflecting \$20,264.28 in Traffic Safety Grant Revenue. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Board Appointments – The Commissioners approved the following board appointments:

- 1) Reappointment of Natalie Carlson, Post Falls, Idaho, to a three-year term as a member of the Missoula County Tax Appeal Board. Ms. Carlson's term will run through December 31, 2006; and
- 2) Reappointment of Philip W. Russ, Missoula, to a three-year term as the citizen voting member of the 9-1-1 Advisory Board. Mr. Russ' term will run through December 31, 2006.

**PUBLIC MEETING – December 17, 2003**

The Public Meeting was called to order at 1:30 p.m. by Commission Chairman Bill Carey. Also present were Commissioner Barbara Evans, Commissioner Jean Curtiss, Deputy County Attorney Colleen Dowdall and County Public Works Director Greg Robertson.

**Pledge of Allegiance**

**Public Comment**

None

**Routine Administrative Actions**

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$740,480.62. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Presentation: Missoula Aging Services – “Neighbor to Neighbor” Project**

Colleen Baldwin, Program Manager with Missoula Aging Services, Missoula Senior Service Corps, wanted to thank some of the people who worked on this project, including Jane Ellis, Department of Disaster and Emergency Services; Doug Burreson, Surveyor's Office; Susan Kohler, Executive Director of Missoula Aging Services; Eileen Samsom, Director of Programs; Bernie O'Connor, Elder Services and Curtis Hammond, Staff Member who ran the “Neighbor to Neighbor” Project. Over the past 3 or 4 years there have been many conversations with Jane Ellis, Mike McMeekin and the Commissioners regarding the fact that if there were a disaster – major fire, snowstorm or terrorism – it would be difficult to find those in the population most in need, people over 85 or people who are homebound, in order to get them the assistance they needed. Missoula Aging Services had already documented those seniors who receive their services but there were a lot more seniors that they do not have contact with and therefore, neither does Emergency Services. One of the major concerns was the rural population; distance and isolation make it more difficult for them to receive services during an emergency. In April, 2002, the Commissioners joined in the effort to find a solution. In September, 2002, Missoula Aging Services Retired and Senior Volunteer Program (RSVP) was awarded a Homeland Security grant by the Corporation for National Community Service. Numerous community and County-wide agencies have come forward to offer their time and knowledge as to what might best be done with the project. As a result of the tremendous interest, the “Neighbor to Neighbor” Project was born. The goal of the project was to recruit RSVP volunteers to provide outreach to the target population, homebound seniors and those over 85. There were four major objectives to the project. One was to compile contact information for use by public health agencies and emergency responders. Another was to educate the target population regarding emergency preparedness and the availability of senior services. Use of the City and County Surveyors Geographic Information System (GIS) to map these seniors and homebound actual residences on the overlay system so an emergency responder can look at the map to locate them was another objective. Neighbor to Neighbor has given many seniors peace of mind to know they are more safe in their homes and to learn of the many resources available to them. At the beginning of the project it was anticipated that there would be 33 RSVP volunteers providing one-on-one contact with approximately 500 of Missoula County's most vulnerable population, urban and rural. At the conclusion of the project, 629 seniors received one-on-one contact. 369 of those chose to receive additional educational materials. 130 of those chose to participate in expanded in-home interviews, increasing their awareness of disaster preparedness and the availability of senior services. 76 RSVP served on the project, more than double the original goal of 33. Today, Aging Services is presenting to Emergency Services the location of 904 seniors, 400 more than their original goal. The Neighbor to Neighbor Project epitomizes what can happen when a community pulls together. Some very special people have helped to make this project possible. One of the drawbacks of putting their information into the GIS was to determine who would sit and input the data. A dedicated volunteer, Terry Seivert, felt very strongly about the project and, to date, has spent over 2,000 hours of his own time to create a software program that will interface with the County's GIS. She would also like to speak about Doug Burreson of the County GIS department. Doug has mentored and worked with Terry to create the software so that it works correctly and will not take a lot of personnel time to manage. Doug's dedication has involved many hours of personal time. Doug was presented with a Certificate of Appreciation. A representative of the 76 RSVP volunteers, Bob O'Connor, was also presented with a Certificate of Appreciation. She then handed the data for Phase I of the “Neighbor to Neighbor” Project over to Jane Ellis.

Jane Ellis stated that she appreciated Colleen's and staff's efforts on this project. It underscores that there are people out there that Emergency Services wanted to be sure could be served in an emergency. It is sometimes hard to find those people and they appreciate the opportunity to work with anyone willing to help provide that information. It also underscores the notion that everyone has a role to play in an emergency. She thanked Colleen and Susan Kohler for the information.

Chairman Carey congratulated everyone for their work on this project. It is wonderful when the community works together to accomplish and exceed those goals.

Commissioner Curtiss thanked Aging Services for moving the project forward.

**Decision: Petition to Abandon a Portion of DeSmet Road**

Chairman Carey reconvened the public hearing.

This is a petition to abandon a portion of “DeSmet Road from the intersection of DeSmet Road and DeSmet Road at the Section Corner of 26, 27, 34 and 35 for approximately 485 feet to the east as shown in County Road Book 1, located in the southwest one-quarter of Section 26, Township 14 North, Range 20 West, Missoula County, Montana.”

The reasons for the request are as follows:

1. To make travel between Expressway and DeSmet Road easier and safer.
2. Alleviate intersection confliction at Expressway and DeSmet Road.
3. Right-of-way has no value to Missoula County.

The following landowners have been notified: Gary J. Gallagher Revocable Living Trust; Entech, Inc.; EBMC, LLC; Johnson Brothers Contracting, Inc.; Tim Mellgren; and George and Dianne Grutsch.

This was part of the Expressway project done a few years ago by the County. This is surplus right-of-way that should be abandoned and made part of a subdivision recently approved for the Grutschs. This petition will clear title to the property.

Chuck Wright, Assistant Public Works Director, stated that he and Commissioner Curtiss viewed that portion of DeSmet Road to be abandoned. They agree it would be in the public interest to grant the petition.

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

Commissioner Curtiss moved that the Board of County Commissioners grant the petition to abandon a portion of "DeSmet Road from the intersection of DeSmet Road and DeSmet Road at the Section Corner of 26, 27, 34 and 35 for approximately 485 feet to the east as shown in County Road Book 1, located in the southwest one-quarter of Section 26, Township 14 North, Range 20 West, Missoula County, Montana." Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

**Decision: Request to Alter Bitterroot Road, Bitterroot High Water Road and Missoula County Road Plat Book 1 Road**

Chairman Carey reconvened the public hearing.

This is a petition to alter "Bitterroot Road, Bitterroot High Water Road and Missoula County Road Plat Book 1 Road, located in Sections 11 and 14, Township 12 North, Range 20 West, Missoula County, Montana."

The reasons for the request are as follows:

1. These three roads are not locatable on the ground.
2. Relocating these roads moves them to an existing roadway easement.

The following landowners have been notified: Maloney Properties, LLC and Artie and Kay Dorris.

These roads are associated with the Maloney Ranch development that is currently making it way through the subdivision review process. The petition is to alter and realign all three roads to fit the overall development plan of the Maloney Ranch development. This will make all the right-of-ways match and become one right-of-way.

Chuck Wright, Assistant Public Works Director, stated that he and Commissioner Curtiss viewed those portions of the roads to be altered. They agree it would be in the public interest to grant the petition.

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

Commissioner Curtiss moved that the Board of County Commissioners grant the petition to alter "Bitterroot Road, Bitterroot High Water Road and Missoula County Road Plat Book 1 Road, located in Sections 11 and 14, Township 12 North, Range 20 West, Missoula County, Montana." Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

**Decision: Request to Alter a Portion of Lower Miller Creek Road**

Chairman Carey reconvened the public hearing.

This is a petition to alter "Lower Miller Creek Road, located in Section 11, Township 12 North, Range 20 West, Missoula County, Montana."

The reason for the request is as follows: The roadway is going to be improved.

The following landowners have been notified: Maloney Properties, LLC and Artie Dorris.

This petition is associated with the previous request in that it is associated with the Maloney Ranch Phase VIII development. Construction plans for the realignment of Miller Creek Road will be submitted to Public Works in the near future.

Chuck Wright, Assistant Public Works Director, stated that he and Commissioner Curtiss viewed the portion of the road to be altered. They agree it would be in the public interest to grant the petition.

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

Commissioner Curtiss stated that this portion of the road has a sharp corner on a hill and the realignment will give it a better grade. She would like to add some conditional language to the motion as the road is not yet built.

Commissioner Curtiss moved that the Board of County Commissioners grant the petition to alter "Lower Miller Creek Road, located in Section 11, Township 12 North, Range 20 West, Missoula County, Montana," conditional on construction of the road to County standards by the developer and accepted by Missoula County Public Works. Commissioner Evans seconded the motion.

Colleen Dowdall was concerned that this was not going to be accepted as right-of-way unless it is built to County standards.

Commissioner Curtiss stated the road doesn't exist right now. It is not warranted to alter the right-of-way of the existing road until this road is built and can replace the existing road.

Colleen Dowdall stated that the motion as made was acceptable.

The motion carried on a vote of 3-0.

**Decision: Request to Abandon an Unnamed Road in Road Book 1 (Golden West Addition No. 1, Lot 16)**

Chairman Carey reconvened the public hearing.

This is a petition to abandon “an unnamed road in Road Book 1, located in Golden West Addition No. 1, Lot 16, in the southwest one-quarter of Section 14, Township 13 North, Range 20 West, Missoula County, Montana.”

The reasons for the request are as follows:

1. It does not physically exist.
2. The location is impractical – the intersection with Mullan Road is in a dangerous location.
3. It interferes with the proposed subdivision of Lot 16.

The following landowners have been notified: Avi and Jodi Bardin.

Chuck Wright, Assistant Public Works Director, stated that he and Commissioner Curtiss viewed the portion of the road to be altered, which is only for Lot 16 of the Golden West Addition No. 1. They agree it would be in the public interest to grant the petition, however, the road right-of-way does go all the way to Mullan Road and a connection is hoped for at some point in the future.

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

Commissioner Curtiss moved that the Board of County Commissioners grant the petition to abandon “an unnamed road in Road Book 1, located in Golden West Addition No. 1, Lot 16, in the southwest one-quarter of Section 14, Township 13 North, Range 20 West, Missoula County, Montana.” Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

**Hearing (Certificate of Survey): Babbitt 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 as a tract of land located within the northeast one-quarter of Section 18, Township 13 North, Range 16 West, P.M.M., Missoula County, Montana, being more particularly described as Tract 26 of Certificate of Survey Number 170.

Tanya M. Babbitt has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 20 acres in size located near Potomac, Montana. Ms. Babbitt proposes to create one approximately five acre parcel for transfer to her husband, Mike Babbitt, for residential purposes. She intends to keep the remaining 15 acre parcel for residential purposes as well.

The history of the parcel is as follows: COS 170 was filed in 1974 creating 26 lots, each greater than 10 acres in size. Carl and Elizabeth Stine purchased the parcel November 15, 1974. Lot 26 was then quit claimed to Carl Edward Stine July 27, 1978 by his wife. Darlyne Maloof purchased the parcel August, 1978 and it was deeded to Nita Adamson in November, 1979. The current owner, Tanya M. Babbitt, purchased the parcel from Nita Adamson in November, 2003.

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

Chairman Carey stated that because Ms. Babbitt, or someone representing her, was not present, he would recess the hearing and postpone action to a date to be determined.

**Hearing (Certificate of Survey): Walker 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 as Tract 5A of COS 1785, located in the south one-half of the northwest one-quarter, Plat B7, Section 30, Township 14 North, Range 20 West.

Dwane A. Walker has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately five acres in size located on the western edge of Missoula. Dwane Walker proposes to create one approximately one acre parcel for transfer to his parents, William and Jean Walker, for residential purposes and keep the remaining approximately four acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 1785	1979	Occasional Sale	Fred Lipscomb	Kay L.W. Brown

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

Dwane Walker was present and came forward to answer any questions the Board may have.



Chairman Carey stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. He asked Mr. Walker if he was going to transfer this land to his parents.

Dwane Walker stated that was his intention, it is not an attempt to evade subdivision regulations.

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

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

**Hearing: Windsor Park Subdivision and Special District Rezoning (233 lots on 41.59 acres) – off Wheeler Drive, east of the Canyon East Subdivision**

Chairman Carey opened the public hearing.

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

This is a proposal from B & E Corporation to create the Windsor Park Subdivision and Special Zoning District. The subdivision has 233 residential lots with 233 to 386 dwelling units on a 41.6 acre parcel. The property is located on the eastern edge of the Canyon East subdivision approved by the County Commissioners in July of 2003. The property is located south of Interstate 90, north of Expressway and is accessed from Wheeler Drive, Storehouse Way, Deveraux Place and Bordeaux Boulevard. The property has been traditionally used for agricultural purposes.

Many of the agency comments included in the submittal packet were addressed by the applicant by modifying the proposal prior to final submittal of the application. At their regularly scheduled meeting on December 2, 2003, the Missoula Consolidated Planning Board voted unanimously to recommend approval of the rezoning request and subdivision request, subject to staff's recommended conditions with three additional amendments to the zoning district.

1. Change the minimum lot width in Subdistrict No. 1 from 40 feet to 38 feet.
2. Change the minimum lot width in Subdistrict No. 2 from 65 feet to sixty feet.
3. Change the parking buffer landscaping Section to: "Visual buffers shall consist of plantings, or a combination of plantings and fencing, and shall provide at least 50% effective screening at the time of planting."

The applicable plans are the 1996 Butler Creek Plan and the 1998 Missoula Urban Area Comprehensive Plan Update. The property is located in the Primary Urban Growth Area. This is "the area in which high density residential, commercial and industrial development is encouraged to locate. This area is generally considered to be appropriate for all urban density residential development when there are no environmental constraints and where the public services necessary to support high density uses (most notably public transportation and public sewer) are present."

The property is currently zoned C-RR3. C-RR3 zoning allows a maximum density of 4 dwellings per acre, a minimum lot size of 10,000 square feet, a minimum lot width of 75 feet, front and rear yard setbacks of 25 feet, side yard setbacks of 7.5 feet and a maximum building height of 30 feet. The gross density of the proposed subdivision is from 5.6 up to 9.3 dwelling units per acre.

Subdistrict No. 1 is "Single Family Detached Homes," which are small homes with alley access on minimum 3,400 square foot lots. Subdistrict No. 2 provides for "Short Court Homes," which are small homes accessed by short courts on minimum 4,400 square foot lots. Subdistrict No. 3 provides for "Townhomes," which are small homes on individual lots that have common walls. These will have a minimum lot width of 28 feet. Subdistrict No. 4 provides for "Flexible Multi-Family Lots." These units will be developed as either "Short Court Homes" as in Subdistrict No. 2 or Multi-Family Dwellings with a density of up to 25 dwelling units per acre.

The subdivision is accessed from Wheeler Drive, a two lane paved public road, 24 feet wide with 2 foot shoulders within a 60 foot right-of-way. Wheeler Drive provides access to commercial/industrial uses and is required to have a minimum 32 foot wide road within a 60 foot to 80 foot right-of-way. There are currently no curb, gutter or sidewalks on Wheeler Drive. The applicant is proposing to add curb and gutter on the north side of Wheeler Drive, creating a 46 foot wide road width within an 80 foot right-of-way.

The applicant is proposing a 33 foot wide road with curb and gutter on the east side of Storehouse Way and is requesting a variance from Subdivision Regulations Article 3-2(3) requirement that the road classified as a collector be 36 feet wide within a 60 foot right-of-way. County Public Works and City Engineering commented that Storehouse Way as a 33 foot wide public road within a 60 foot right-of-way would be sufficient because of the level of traffic expected. The improvements being proposed are consistent with the Canyon East Subdivision to the west of this proposal. Staff and the Planning Board are recommending approval of the variance request.

The applicant is proposing 5 foot sidewalks with a 6 foot landscaped boulevard on Storehouse Way and is requesting a variance from the 6 foot sidewalk and 10 foot boulevard requirement. Staff and Planning Board are recommending approval of the variance request.

Bordeaux Boulevard, connecting from the Canyon Creek Village and Canyon East subdivisions, runs east/west through the center of the proposed subdivision and provides access to the common area as well as the short court, single family and flexible multi-family lots.

Deveraux Place, connecting from the Canyon East subdivision, runs east/west along the south of the proposed subdivision and provides access to townhouse, short court, single family and flexible multi-family lots.

Potter Park Loop intersects with Wheeler Drive with the alignment for Majestic Drive to the south. Potter Park Loop is the principal loop road in this subdivision, linking up with all the other streets within the subdivision.

The subdivision plat includes an interior grid street pattern of 33 foot wide streets within 56 foot rights-of-way with parking and boulevard sidewalks on both sides of the streets. The street system design connects with existing streets to the west and allows for connections to future development on the east boundary of the subdivision. This grid also contains alleys which are paved to a 12 foot width within a 20 foot right-of-way. The plat also includes lots that are accessed by short courts that are paved to a 21 foot width within a 28 foot private access easement.

Planning Board is recommending conditions of approval that pedestrian access easements be created at the end of the short courts between Lots D-5 and D-6 and Lots D-21 and D-22, connecting the end of the short courts to the adjacent common area; and between the short courts serving Lots B-39 through B-41 and B-27 through B-30 in order to provide an east/west pedestrian connection through this long block.

There are two linear common areas that are proposed as buffering from the gravel pit to the east of the subdivision and Interstate 90 to the north of the subdivision. Missoula County Subdivision Regulations state that a buffering screen or evergreen foliage may be required to be planted along the lot lines of those lots in a subdivision that abut an arterial or an adjacent use of higher intensity.

Planning Board recommends a condition of approval that the covenants contain a section that requires that fences adjacent to the linear common areas may not exceed 4 feet in height. Planning Board also recommends that a final plan for the landscaping and trail design be approved by OPG and that this landscaping be installed concurrently with the approved phase where the improvements are located.

The parkland dedication required for this 41.6 acre subdivision with 1,119,928 square feet (25.71 acres) of net lotted area is 120,517 square feet (2.77 acres). The applicant is proposing 3.59 acres of common area in the form of a 1.96 acre central park and the linear common areas on the north and east. This amount of parkland dedication is 0.824 acres more than that required by the Subdivision Regulations.

Nick Kaufman, WGM Group, Inc., developer's representative, stated that Collin Bangs of B & E Corporation was also present today. Mr. Bangs has been thinking of doing a project such as this for more than 15 years. Mr. Bangs is dedicated to providing housing at an affordable rate. A Power Point presentation of the project was shown. Windsor Park is proposed for 233 lots. There are 102 single family homes, 42 short court homes and 54 townhomes. The flexible multi-family area allows for anything from single family homes up to multi-family dwellings at 25 units per acre. The subdivision is designed around a large, focal point neighborhood park. It accesses off Wheeler Drive on the south and Wheeler Drive will be improved. The design went through significant modifications after agency review to meet the concerns raised. Mr. Bangs and Mr. Edgel own Lot 1 and Lot 2 of the underlying Green Acres Tracts and they have an option to buy Lot 3 to the east. They will be bringing another proposal for Lot 2 shortly. Canyon Creek Village was the first proposal in this area. After much work, it was agreed that putting homes at increased density, where the Comprehensive Plan calls for 6 units per acre, with traditional neighborhood design was a good idea. Canyon Creek Village is next to a 400 acre employment center, Missoula Development Park, with sewer and water, bus service, convenience store zoning at Wheeler Drive and Expressway, and a Roller Rink. In the middle is a 150 lot subdivision called Canyon East, a continuation of the design of Canyon Creek Village. There is some diversity with the Windsor Park subdivision. The lots are a little longer and wider than in Canyon Creek and Canyon East. They include the diversity of short courts which provide security and a single entrance to three or four homes. Short court homes provide important social contacts and owners feel safe and secure. The design has been successful for Mr. Bangs at his developments on Davis Street and Curtis Street. Townhomes which back up to Expressway are also proposed. A walkway is proposed around the east and north sides of the project to provide exercise, additional pedestrian connections and a buffer from the land use to the east and the Interstate to the north. The 1998 Growth Policy recommended this land for a density of 6 dwelling units per acre. It also complies with the proposed Wye/Mullan Land Use Plan. The infrastructures of sewer, water and transportation are all being planned and implemented. The single family detached homes being proposed are the same as those constructed at Bentley Park. The short court homes being proposed are the same as those constructed at Placid Court on Davis Street. Homeowners like short court homes, the design functions well. A multi-family housing complex at Hellgate Meadows was recently built by Mr. Bangs and Mr. Edgel. Townhomes for this proposal are located on the north side of Wheeler Drive. The model being proposed has been quite successful for Mr. Bangs and Mr. Edgel. The amendments to the zoning district recommended by staff and Planning Board are the result of an oversight during the redesign process. The 1975 Comprehensive Plan called for this area to be developed at 6 dwelling units per acre, as did the 1986 update, the 1998 update and the 2003 proposed Wye/Mullan plan. The 1976 zoning also allowed for 6 dwellings per acre. There is a need for affordable housing in the community which this proposal satisfies.

Commissioner Curtiss stated that the report indicates that once the development is built out there could be Accessory Dwelling Units (ADU) with off-street parking. She asked where that parking would be located.

Nick Kaufman stated that the Office of Planning and Grants is working on Phase II Growth Management implementation tools, which include regulations that govern ADU's. The zoning performance standards for off-street parking for ADU's would kick in when those regulations are adopted. They are being careful to not close off that opportunity in this development. If it is not included in the zoning and covenants now, ADU's might not be allowed for future infill development. It allows planning for the future without designing the performance standards for that option.

Dale McCormick stated that the zoning district regulations state that ADU's shall have one paved off-street parking space provided in addition to the required off-street parking for the primary dwelling unit.

Commissioner Curtiss stated that the photos shown of short court homes do not include curbs and gutters. Would curb and gutter be included in this development.

Nick Kaufman stated that short courts are now required to have curb and gutter on both side and be constructed to a 21 foot back-of-curb to back-of-curb width.

Commissioner Curtiss stated that the photos shown of the townhomes only had two buildings attached. Would the townhomes for this development have more than two buildings attached.

Nick Kaufman stated that the proposal is for duplex townhomes as shown in his Power Point presentation.

Commissioner Curtiss stated the covenants state that no outdoor lighting shall blink, flash, etc. Would Christmas lights be allowed.

Nick Kaufman stated they would be allowed.

Commissioner Curtiss stated that Condition 10 required fences to be no more than 4 feet in height. Was there a basis for this requirement in the Subdivision Regulations.

Dale McCormick stated the concern was that there was the potential of having a six foot high fence along the back yards of all the houses along that edge of the subdivision. It could create an isolated area that was not safe.

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

Commissioner Curtiss moved that the Board of County Commissioners rezone the property generally described as a portion of Lot 2 and all of Lot 3, Green Acres, Phase 2, from "C-RR3" (Residential) to "Windsor Park Special Zoning District," based on the findings of fact and subject to the condition in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners amend the Windsor Park Special Zoning District standards as indicated in Attachment A-3 of the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Subdivision Regulations 3-2(3) requiring a 36 foot wide road for Storehouse Way, based on the finding of fact in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Subdivision Regulations 3-2(9)(A) requiring 10 foot landscaped boulevards with 5 foot sidewalks to allow 6 foot landscaped boulevards on Storehouse Way, based on the findings of fact in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Subdivision Regulations 3-3(1)(E) requiring no lot have a width less than 60 feet or an average depth greater than 3 times its average width, based on the findings of fact in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the Windsor Park Subdivision, based on the findings of fact in the staff report and subject to the recommended conditions of approval. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

#### **Windsor Park Special Zoning District Condition of Approval:**

1. The Windsor Park Special Zoning District standards shall be amended as indicated in Attachment A-3 of the staff report.

#### **Windsor Park Subdivision Conditions of Approval:**

1. The Windsor Park Special Zoning District shall be adopted prior to final plat approval of Phase I. *Subdivision Regulations Article 3-1(1)(B).*
2. The Phasing Plan on the submitted preliminary plat shall be adopted as shown. Phase I final plat shall be submitted for filing within one year of approval. Phases II and III final plats shall be submitted for filing within two years of approval. Phase IV final plat shall be submitted within three years of approval. Phase V final plat shall be submitted within four years of approval. Phase VI final plat shall be submitted within five years of approval. *Subdivision Regulations Article 4-1(13), 4-1(17) and staff recommendation.*

#### **Airport**

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

"This property is within the Airport Influence Area and subject to the requirements of the Airport Influence Area Resolution." *Subdivision Regulations Article 3-1(2), 4-1(12) and Airport Authority request.*

#### **Roads**

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 constitutes assent of the lot owner to waive the right to protest a future RSID/SID for improvements including, but not limited to, the installation of paving, drainage facilities, curbs and gutters, pedestrian walkways or bikeways to Wheeler Drive, Storehouse Way and all streets within the Windsor Park 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(3)(E) and OPG recommendation.*

6. The developer shall petition for annexation into the Missoula Urban Transportation District prior to Phase I plat approval. *Subdivision Regulations Article 3-1(1), 3-2(1) and MUTD recommendation.*

#### **Pedestrian Facilities**

7. A 20 foot wide pedestrian easement between Lots D-5 and D-6 and between Lots D-21 and D-22 connecting the end of the short court to the adjacent common area and between the short courts serving Lots B-39 through B-41 and B-27 through B-30 shall be indicated on the final plat, subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-2(1)(i)(vi)(e) and OPG recommendation.*
8. A final plan for the landscaping and trail design within the linear common areas and the pedestrian improvements within common areas and the pedestrian easements shall be installed concurrently with the approved subdivision phase where the improvements are located and shall be reviewed and approved by OPG prior to final plat approval of Phase I. *Subdivision Regulations Article 3-1(2) and OPG recommendation.*

#### **Fire**

9. Fire hydrant locations shall be approved by the Missoula Rural Fire District prior to final plat approval of Phase I. *Subdivision Regulations Article 3-1(6) and Missoula Rural Fire District recommendation.*

#### **Covenants**

10. The covenants for this subdivision shall be amended, subject to review and approval by OPG, prior to final plat approval and shall include the following items:
- A. A section that requires fences adjacent to the linear common areas shall not exceed 4 feet in height. *Subdivision Regulations Article 3-1(2) and OPG recommendation.*
  - B. A provision for maintenance of the pedestrian facilities located within the pedestrian easements required by subdivision conditions. *Subdivision Regulations Article 3-1(2) and OPG recommendation.*
  - C. The landowner shall maintain the property in compliance with Montana County Weed Control Act and the Missoula County Noxious Weed Management Plan.
  - D. The landowner shall revegetate any ground disturbance caused by construction or maintenance with beneficial species appropriate for the site at the earliest appropriate opportunity after construction or maintenance is completed. *Subdivision Regulations Article 3-1(1), Missoula County Weed Board and OPG recommendation.*
  - E. The covenants addressing Weed Management may not be amended or sections eliminated without the approval of the governing body. *Subdivision Regulations Article 3-1(10), County Attorney's Office and OPG recommendation.*

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

### **THURSDAY, DECEMBER 18, 2003**

The Board of County Commissioners met in regular session; all three members were present in the afternoon. In the forenoon, Commissioner Curtiss and Rosalie Cates of MCDC traveled to Thompson Falls to meet with the Sanders County Commissioners regarding Regional Development Corporations.

Claims Lists – Commissioners Evans and Carey signed four (4) Claims Lists, dated December 17, 2003, with the following grand totals:

- 1) \$30,452.49;
- 2) \$428.44;
- 3) \$1,971.56; and
- 4) \$11,250.32.

The Claims Lists were returned to the Accounting Department.

Plat – The Commissioners signed the Plat for Bissell Estates, a five-lot subdivision of Tract A-1, COS 2008, located in the E½ of Section 34 and the SW¼ of Section 35, T 12 N, R 17 W, PMM, Missoula County, a total area of 5.00 acres, with the owners of record being Kendall G. and Deborah K. Bissell.

#### ADMINISTRATIVE MEETING

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

Letter – The Commissioners signed a letter to Amy Baird, The Montana Lewis and Clark Bicentennial Commission (“LCBC”), Helena, Montana, dated December 18, 2003, supporting the \$2,000 grant request from the Western Montana LCBC. This funding would help pay for administrative coordination, support services, etc. so that a WMLCBC representative can attend Lewis and Clark related meetings, conference and workshops.

Easement – The Commissioners, as Directors of the Missoula County Airport Industrial District (“MCAID”), signed an Easement, dated December 18, 2003 by the MCAID and Missoula County for a 20’ wide public roadway easement dedication for Tract 3 of COS 3858, located in the NE¼ of Section 1, T 13 N, R 20 W, within the Missoula Development Park, adjacent to Canyon Creek Village. The document was returned to Barb Martens in the Projects Office for further handling.

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Dawn Rothschilder, of System Building Services, for cleaning services at the Partnership Health Center (“PHC”), as set forth therein. The Contract shall commence on September 1, 2003. Compensation will be monthly in the amount of \$1,250 upon receipt of invoice.

Contract – The Commissioners signed an annual Professional Services Contract between Missoula County and Beth Thompson, M.D. to serve as Health Services Division Medical Advisor to develop and/or approve public health clinical policies and standards to assure quality performance, as well as act as Liaison with health care providers in the community. The total amount shall not exceed \$6,000.00. The term will be July 1, 2003 through June 30, 2004. All other terms and conditions are set forth therein. The document was returned to the Health Department for further signatures and handling.

Resolution No. 2003-133 – The Commissioners signed Resolution No. 2003-133, dated December 18, 2003, a Budget Amendment for the Sheriff / Detention Department in the amount of \$4,360.40 reflecting revenue received from a Homeland Security Robot Training Grant. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Contract – The Commissioners signed an annual Contract, dated December 16, 2003 between Missoula County and Collection Bureau Services, Inc. for debt collection for both Missoula County Justice Courts. The term will be January 1, 2004 through December 31, 2005. The Fee Schedule and all other terms and conditions are set forth therein.

Contract – The Commissioners signed an annual Section 5303 Contract (#04-50-0079) for Federal Fiscal Year 2004 (October 1, 2003 through September 30, 2004) between the Montana Department of Transportation Rail, Transit and Planning Division (State), and the Missoula Office of Planning and Grants (“MOPG”). The total amount of the contract is \$90,597.00 (80% federal share is \$72,478.00, and the 20% local share is \$18,119.00), which represent part of the budgets for MOPG and Mountain Line, and are allocated in accordance with the Missoula Unified Work Program. All other terms and conditions are set forth therein. The document was returned to Mike Kress in OPG for further signatures and handling.

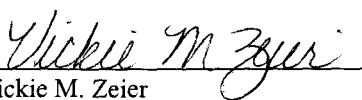
Letter – The Commissioners signed a Letter of Understanding to Bob Dahl, dated December 18, 2003. Mr. Dahl is the new Caretaker in residence at the property owned by Missoula County and known as LaLonde Ranch. The letter sets forth Missoula County’s duties and responsibilities to the Caretaker, and the Caretaker’s duties and responsibilities to Missoula County, as set forth therein. The document was returned to Barb Martens in the Projects Office for further handling.

By-Laws – The Commissioners reviewed, approved and signed the Board of Trustees Bylaws for the Historical Museum at Fort Missoula (approved November 17, 2003).

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

**FRIDAY, DECEMBER 19, 2003**

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

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

**MONDAY, DECEMBER 22, 2003**

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 Horace Mann Insurance, Springfield, Illinois, as Principal for Missoula County Public Schools Warrant #56041, issued October 17, 2001 on the MCPS A/P Fund in the amount of \$3,025.00 (for payroll deductions), which cannot be found.

Letter – At their Planning Status meeting with the Office of Planning and Grants on December 22, 2003 the Commissioners reviewed a request and signed a letter (based on the recommendation of staff), dated December 22, 2003 to Gilbert Larson of Professional Consultants, Inc., approving his request to amend Condition 13 of K/O Estates Subdivision. The amendment relates to a gravel pathway, as set forth therein.

Agreement – Chairman Carey signed a Memorandum of Agreement, dated November 26, 2002, between the Missoula County Park Board (the “Board”) and Pfau Acres Park for assistance with park development. The Board agrees to provide up to \$3,000 in matching funds from the Capital Matching Fund Program (Fall FY04), and must be spent by November 25, 2005. The document was returned to Lisa Moisey, County Parks Coordinator, for further handling.

**TUESDAY, DECEMBER 23, 2003**

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

Claims List – The Commissioners signed the Claims List, dated December 18, 2003, with a grand total of \$8,058.14. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated December 22, 2003, with a grand total of \$37,992.57. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated December 23, 2003, with the following grand totals:

- 1) \$259,240.67; and
- 2) \$249,121.49.

The Claims Lists were returned to the Accounting Department.

Plat – The Commissioners signed the Plat for Valley Homes Mobile Home Park No. 2, a minor subdivision located in the SE¼ of Section 27, and in the NE¼ of Section 34, all in T 15 N, R 21 W, PMM, Missoula County, a total gross and net area of 14.00 acres, with the owners of record being Valley Homes, LLC.

Plat and Agreements – The Commissioners signed the Plat, Subdivision Improvements Agreement and Guarantee, and Development Agreement for Canyon Creek Village, Phases 5, 6, 7, & 8, a subdivision located in the NE¼ of Section 1, T 13 N, R 20 W, PMM, Missoula County, a total area of 6.90 acres, with the owner being Wesmont Builders/Developers, Inc. The Improvements Agreement is for construction of sewer main and services, water main and services, streets, sidewalks, alleys, and storm drains; said improvements shall be completed no later than one year after plat filing. The estimated costs are \$495,347.50, and have been guaranteed by an Irrevocable Standby Letter of Credit from First Security Bank. The Development Agreement, dated December 1, 2003, is intended to meet requirements of the Missoula County Subdivision Regulations and relates to the maintenance of parks, boulevards, common areas and fire hydrants.

#### ADMINISTRATIVE MEETING

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

Contract – The Commissioners signed a Professional Services Contract with Joclynn Ware Snyder to develop an evaluation tool for the All Stars Program, a best practice drug prevention program being implemented in the middle schools. This program is funded by a Drug Free Communities Support Program Grant. Missoula County will receive \$100,000 from this Grant; Ms. Snyder will receive \$7,000. The term will be January 1, 2004 through September 30, 2004. All other terms and conditions are set forth therein.

Contract – The Commissioners signed a Treasure State Endowment Program (“TSEP”) Contract (#MT-TSEP-CG-04-243) between Missoula County and the State of Montana Department of Commerce, for assistance in partially subsidizing four sub-districts associated with the Mullan Road Corridor Sewer Project. The total amount of the contract is \$2,032,495. All other terms and conditions are set forth therein. The document was returned to Public Works Director Greg Robertson for further signatures and handling.

Consent to Plat – Chairman Carey signed a Consent to Plat, dated December 23, 2003, for a boundary relocation by Montana Regional Orthopedics, LLC for that parcel described as Lots 3 and 4 of 2360 Mullan Road, a platted subdivision of Missoula County, located in the W½ of Section 17, T 13 N, R 19 W. The purpose is to adjust boundaries between the two lots and sale one of the lots to a veterans group for the construction of housing. The document was returned to WGM Group for further handling.

Resolution No. 2003-134 – The Commissioners signed Resolution No. 2003-134, dated December 23, 2003, a Budget Amendment for the Office of Planning and Grants, adjusting the FY '04 adopted budget to account for a reduction in expenditures of approximately \$55,000 (as per agreement when budget was adopted). For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Resolution No. 2003-135 – The Commissioners signed Resolution No. 2003-135, dated December 23, 2003, a Budget Amendment for the Health Department, reflecting a \$3,000 change in cat ordinance funding. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Agreement – Pursuant to an administrative meeting held by the Commissioners on December 9, 2003 (with Commissioner Curtiss voting “no”), the Commissioners signed an Agreement, dated December 23, 2003, in which the Commissioners agree to forgive the 2<sup>nd</sup> quarter of the principal (years 6-10) on a 0% interest loan between Missoula County and the Missoula Children’s Theatre (“MCT”) (dated November 1996). MCT agrees to give repayment of the 3<sup>rd</sup> and 4<sup>th</sup> five-year periods of this loan its top priority assuming increased earned and unearned income places MCT on solid financial ground.

Letter – The Commissioners signed a letter to Ren Essene, Missoula, dated December 23, 2003, supporting funding for homeWORD’s proposed affordable housing development on Grove Street. They also support the applications for Low Income Housing Tax Credits (LIHTC) and Home Investment Partnerships (HOME) Program funds in January 2004.

Amendments – The Commissioners signed Agreement Amendments, dated December 23, 2003, relating to an Agreement between Missoula County and Architects Design Group (“ADG”) (dated December 31, 1998) to provide architectural services for the remodeling of the 4<sup>th</sup> floor of the Courthouse Annex. All amendments are set forth therein. The document was forwarded to Mike Absalonson of ADG in Kalispell for signatures and return.

Letter – The Commissioners signed a letter to Moriah Bucy, DEQ Remediation Division, Helena, Montana, dated December 23, 2003, requesting that DEQ hold a public meeting in Seeley Lake, Montana to discuss its intention to list the Pyramid Mountain Lumber (“PML”) Facility on the Comprehensive Environmental Cleanup and Responsibility

Act ("CECRA") priority list. The Commissioners are against placing PML on the CECRA list as it could jeopardize jobs, as well as current and future financing for the company.

Board Appointments – The Commissioners approved the following board appointments:

- 1) Appointment of Darby Nelson to fill a vacancy on the Seeley Lake Refuse District Board;
- 2) Appointment of Gary Glynn to a three-year term as a "regular" member of the Historical Museum Board of Trustees. Mr. Glynn's term will run through December 31, 2006;
- 3) Reappointment of Mike Fussell, Missoula, to a three-year term as an alternate member of the Historical Museum Board of Trustees. Mr. Fussell's term will run through December 31, 2006;
- 4) Appointment of Kathleen Jackson, Missoula, to a three-year term as a "regular" member of the Missoula Public Library Board. Ms. Jackson's term will run through December 31, 2006;
- 5) Appointment of John L. Brown, M.D., Missoula, as the "alternate member" of the Missoula Public Library Board to fill an unexpired term through December 31, 2005;
- 6) Reappointment of Gary E. McLaughlin, Missoula, to a two-year term as a member of the County Zoning Board of Adjustment. Mr. McLaughlin's term will run through December 31, 2005; and
- 7) Reappointment of Jerry Ford, Missoula, to a two-year term as a member of the County Zoning Board of Adjustment. Mr. Ford's term will run through December 31, 2005.

Other items included:

- 1) The Commissioners voted in agreement that the new restroom facility at Fort Missoula should be connected to the City sewer, if possible. Parks Coordinator Lisa Moisey will further investigate that possibility.

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

**WEDNESDAY, DECEMBER 24, 2003**

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

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated December 23, 2003, with a grand total of \$15,568.06. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated December 24, 2003, with a grand total of \$4,537.29. The Claims List was returned to the Accounting Department.

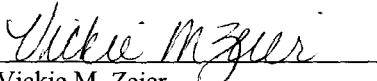
THE WEEKLY PUBLIC MEETING SCHEDULED FOR THIS DATE WAS CANCELLED DUE TO THE HOLIDAYS AND LACK OF AGENDA ITEMS.

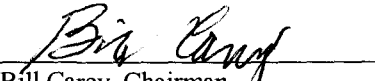
**THURSDAY, DECEMBER 25, 2003**

THE COURTHOUSE WAS CLOSED FOR THE CHRISTMAS DAY HOLIDAY.

**FRIDAY, DECEMBER 26, 2003**

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

  
Vickie M. Zeier  
Clerk & Recorder

  
Bill Carey, Chairman  
Board of County Commissioners

**MONDAY, DECEMBER 29, 2003**

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

**TUESDAY, DECEMBER 30, 2003**

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

Claims List – Commissioners Carey and Evans signed the Claims List, dated December 29, 2003, with a grand total of \$37,063.75. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Evans signed the Claims List, dated December 30, 2003, with a grand total of \$7,905.72. The Claims List was returned to the Accounting Department.

Replacement Warrant – Chairman Carey examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Quality Supply, Missoula, as applicant for Accounting Warrant #30597, issued October 28, 2003 on the Missoula County 2130 Fund in the amount of \$8.90 (for nails adjustment), which was not received in the mail. No bond of indemnity is required.



ADMINISTRATIVE MEETING

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

Certifications of Acceptance – Chairman Carey signed four (4) Missoula County Department of Public Works Certifications of Acceptance for County Maintenance, dated December 23, 2003, for the following:

- 1) ACM. No. 2003-0003, Buckhouse Lane, Road No. L-000910-4, T 12 N, R 20 W, Section 02. The limits of acceptance are .270 miles from the intersection with Blue Mountain thence northeasterly 1425.39 feet to the center of a 60 foot radius cul de sac;
- 2) ACM. No. 2003-0004, Nez Perce Loop, Road No. L-003333-1, T 12 N, R 20 W, Section 32. The limits of acceptance are .727 miles from the intersection with Highway 12 thence north 130.02 feet to the intersection with Nez Perce Loop thence northerly 880.17 feet to the intersection with Conestoga Way thence northwesterly 1.00 feet to the intersection with Conestoga Way thence northwesterly 633.41 feet to the intersection with Claimstake Court thence southwesterly 929.09 feet thence easterly 633.93 feet to the intersection with Conestoga Way thence southeasterly 629.33 feet to the intersection with Nez Perce Loop;
- 3) ACM. No. 2003-0005, Conestoga Way, Road No. L-003335-3, T 12 N, R 20 W, Section 32. The limits of acceptance are .217 miles from the intersection with Nez Perce Loop thence northerly 503.45 feet to the intersection with Nez Perce Loop thence northerly 643.29 feet to the center of a 50 foot radius cul de sac; and
- 4) ACM. No. 2003-0006, Claimstake Court, Road No. L-003334-2, T 12 N, R 20 W, Section 32. The limits of acceptance are .071 miles from the intersection with Nez Perce Loop thence northerly 374.99 feet to the center of a 50 foot radius cul de sac.

The documents were returned to Public Works Director Greg Robertson.

Resolution No. 2003-136 – The Commissioners signed Resolution No. 2003-136, dated December 30, 2003, a Budget Amendment for Financial Administration in the amount of \$400,000 (Flood Control Grant – Corps of Engineers), to provide budget authority for the non-local portion of the Grant Creek PMP. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Board Appointments – The Commissioners approved and signed four (4) letters, dated December 31, 2003, reflecting the following board appointments (made December 30, 2003):

- 1) Reappointment of Eric Edlund, Missoula, to a three-year term as a member of the Missoula County Weed Control Board. Mr. Edlund's term will run through December 31, 2006;
- 2) Appointment of Diana Nash, Missoula, to a three-year term as a "regular" member of the Missoula County Weed Control Board. Ms. Nash's term will run through December 31, 2006;
- 3) Reappointment of John A. Rimel, Missoula, to a three-year term as a member of the Missoula County Weed Control Board. Mr. Rimel's term will run through December 31, 2006; and
- 4) Appointment of John A. Rimel, Missoula, as an "alternate member" of the Historical Museum Board of Trustees. Mr. Rimel's term will run through December 31, 2006.

Request for Action – Chairman Carey signed a letter, dated December 29, 2003, to Senator Conrad Burns, supporting the County's HUD Continuum of Care application for the YWCA Transitional Housing project (the Ada Feldman project for homeless women and their children). An error was made in recording the total grant amount on the original state application, which resulted in HUD's renewal grant award being reduced by \$39,954. This letter appeals to Senator Burns for assistance with restoring the full grant amount of \$65,761.

Subordination of Mortgage – Chairman Carey signed a Subordination of Mortgage between Missoula County and Sarah Koke, dated December 30, 2003 relating to property described as Lot 7B, Lemm's Townhouse Addition Amended Plat of Lolo Center Block 1 Lots 7 and 8, a platted subdivision in Missoula County. A \$5,463.93 loan from Neighborhood Housing Services has been secured by a Deed of Trust. All other terms and conditions are set forth therein. The document was returned to Jenifer Blumberg in the Office of Planning and Grants for further handling.

Other items included:

- 1) The Commissioners moved and voted to approve Barbara Evans as Chairman of the BCC for the year 2004.

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

<b>WEDNESDAY, DECEMBER 31, 2003</b>
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The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was out of the office all day. In the forenoon, Commissioners Carey and Curtiss and Mayor Mike Kadas traveled to Hamilton to meet with the Ravalli County Commissioners, et al, regarding Economic Development Issues.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 26 - Pay Date: December 26, 2003. Total Missoula County Payroll: \$892,037.12. The Transmittal Sheet was returned to the Auditor's Office.

THE WEEKLY PUBLIC MEETING SCHEDULED FOR THIS DATE WAS CANCELLED DUE TO THE HOLIDAYS AND LACK OF AGENDA ITEMS.

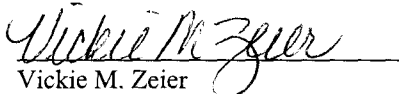
BOOK 004 PAGE 0233

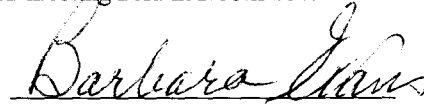
THURSDAY, JANUARY 1, 2004

THE COURTHOUSE WAS CLOSED FOR THE NEW YEAR'S DAY HOLIDAY.

FRIDAY, JANUARY 2, 2004

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, Commissioner Evans attended a Judicial Standards Commission meeting held in Room 201.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

MONDAY, JANUARY 5, 2004

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

Claims List – The Commissioners signed the Claims List, dated December 29, 2003, with a grand total of \$4,199.13. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated December 30, 2003, with the following grand totals:

- 1) \$2,789.46; and
- 2) \$37,583.61.

The Claims Lists were returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated December 31, 2003, with a grand total of \$21,314.28. The Claims List was returned to the Accounting Department.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending December 31, 2003.

TUESDAY, JANUARY 6, 2004

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

Claims List – Commissioners Evans and Curtiss signed the Claims List, dated December 31, 2003, with a grand total of \$44,270.40. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed five (5) Claims Lists, dated January 5, 2004, with the following grand totals:

- 1) \$2,660.73;
- 2) \$36,396.80;
- 3) \$30,434.66;
- 4) \$13,147.09; and
- 5) \$1,851.04.

The Claims Lists were returned to the Accounting Department.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending December 31, 2003.

#### ADMINISTRATIVE MEETING

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

Letter – The Commissioners signed a letter to the Montana Department of Commerce ("DOC"), dated January 6, 2004, supporting the Montana Community Development Corporation ("MCDC") application to the DOC to be the Certified Regional Development Corporation for a region representing Missoula and Ravalli Counties.

Agreement – The Commissioners signed one (1) Sanitary Sewer Grant Program Agreement for Partial Assistance to Owner-Occupied Households Secured by Real Property, dated December 12, 2003, with Dennis T. Wilson, 448 Speedway Avenue, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. All sewer development fees and on-site connection costs and fees are as set forth therein.

Resolution No. 2004-001 – The Commissioners signed Resolution No. 2004-001, dated January 6, 2004, a Budget Amendment for the General Fund – Financial Administration, reflecting \$10,000 for a pass-through National Park Service grant to the Western Montana Lewis & Clark Bicentennial Commission. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Agreement – The Commissioners signed an Employment Agreement, dated June 17, 2002 between the Partnership Health Center and James Ammen for the provision of services as Pharmacy Manager at PHC. The term will be June 17, 2002 through June 30, 2004. Compensation for services will be \$30.00 per hour (6/30/03-12/31/03) and

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\$32.10 per hour (1/1/04-6/30/04). All other terms and conditions are set forth therein. The document was returned to Terry Delgadillo at PHC for further handling.

Board Appointments – The Commissioners approved (with Commissioner Curtiss abstaining) and signed three (3) letters, dated January 6, 2004, reflecting the following two-year term reappointments to the Missoula County Fair Commission Board: 1) Julie Gemar-Williams - member; 2) E.E. "Buck" Smith - member; and 3) Nick Kaufman – ad hoc member. All terms will run through December 31, 2004.

Other items included:

- 1) Commissioner Curtiss will attend the MACo Midwinter Meeting, to be held February 9-13, 2004, in Billings. Commissioners Evans and Carey will not attend.

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

**WEDNESDAY, JANUARY 7, 2004**

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

Claims Lists – The Commissioners signed three (3) Claims Lists, dated January 6, 2004, with the following grand totals:

- 1) \$2,650.34;
- 2) \$16,676.91; and
- 3) \$5,779.26.

The Claims Lists were returned to the Accounting Department.

Monthly Report – Chairman Evans examined, approved and ordered filed the corrected Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending December 31, 2003.1

CHIEF ADMINISTRATIVE OFFICER MEETING

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

Agreement – The Commissioners signed an Agreement between Missoula County and the American Federation of State, County & Municipal Employees ("AFSCME"), Council No. 9 (Juvenile Detention Unit), for the establishment of an equitable and peaceful procedure for the resolution of differences, and the establishment of rates of pay, hours of work, fringe benefits and other conditions of employment. This Agreement affects Juvenile Detention Officers and Juvenile Housing Unit Managers employed at the Detention Facility. The term will be July 1, 2003 through June 30, 2004. All other terms and conditions are set forth therein. The document was returned to Steve Johnson in Human Resources for further signatures and handling.

Agreement – Chairman Evans signed an Agreement between Missoula County and the Montana Department of Public Health and Human Services ("DPHHS"), Addictive and Mental Disorders Division, for the provision of \$165,000 in County funding for enhanced Medicaid reimbursement for mental health center services (funds transfer for Medicaid match). The term will be July 1, 2003 through June 30, 2004. All other terms and conditions are set forth therein. The document was returned to Kristina Swanson in the Office of Planning and Grants for further handling.

Agreement – Chairman Evans signed an Agreement between Missoula County and the Montana Department of Environmental Quality ("DEQ") for the purpose of providing public information and outreach regarding radon. The total amount shall not exceed \$3,500, which is funded by a federal grant from the EPA. All other terms and conditions are set forth therein. The document was returned to the Health Department for further handling.

Other items included:

- 1) The Commissioners held a discussion regarding the Lolo RSID 901 – Annexation Petitions. Public Works Director Greg Robertson was authorized to prepare a Resolution annexing the properties.
- 2) An update was given regarding action in the last Legislative Session pertaining to prohibiting restrictions on Jake Brakes.

PUBLIC MEETING – January 7, 2004

The Public Meeting was called to order at 1:30 p.m. by Commissioner Chairman Barbara Evans. Also present were Commissioner Bill Carey, Commissioner Jean Curtiss, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall, County Clerk and Recorder/Treasurer/Surveyor Vickie Zeier and County Public Works Director Greg Robertson.

Pledge of Allegiance

Public Comment

None

Routine Administrative Actions

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted the past weeks (December 17, 2003 to January 7, 2004) and approve the weekly claims lists in the amount of \$907,418.61. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

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**Presentation: To the Board of County Commissioners by Deputy Sheriff Robert Parcell**

Deputy Sheriff Robert Parcell stated that in October of 2001 he was called up for active duty with the Marine Corps. He served in Hawaii at Marine Force Pacific, Japan, Korea, Okinawa, etc. Six months led to a year which then led to two years. During that time, he had good support from the County and he sincerely appreciated that support. This is not the first time this happened, he was also called to active duty during the first Gulf War. Every time he has been called up, he has never had to worry about his job or family, they were taken care of by the County and that is not always the case for others. He and the Marine Corps appreciate the support the County has shown for their personnel. To commemorate that fact, he presented the County a plaque in honor of their support. The plaque reads:

To Missoula County  
29 Oct 2003

Outstanding support of operations.  
Enduring Freedom, Noble Eagle and  
Iraqi Freedom.  
From Col. Robert E. Parcell  
MARFORPAC, Camp H.M. Smith, HI.  
9/11/2001 "Never Forget"

**Hearing: Petition to Change the Name of a Private Right-of-Way (Tree Line Loop to Lamar Trail) – North Carlton Heights-Maple Creek Subdivision**

Greg Robertson presented the staff report.

This is a request to change the name of a private right-of-way known as Tree Line Loop to Lamar Trail North. The right-of-way is located in Section 15, Township 11 North, Range 20 West, in the subdivision known as Carlton Heights North.

The following people were notified: Deslie Dee Gianchetta, Lee and Ellen Goldstein, Kevin Mytty of Shelter West, Inc., and Tom MacLay. No written comments for or against the petition have been received.

Mike Sehestedt stated that the Board should conduct the public hearing but there is no site inspection required. To be consistent for identification purposes by 9-1-1, all road name changes are treated the same, for either public or private roads.

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

Commissioner Curtiss asked if this was something that needed to be published in the paper.

Mike Sehestedt stated there is no statutory provision for publication of a road name change.

Greg Robertson stated that all those impacted by the change have been contacted.

Mike Sehestedt stated that he is currently working on a draft policy with Public Works and DES to come up with a policy on all road name changes. It will call for notice for those affected but it doesn't call for published notice.

Commissioner Carey moved that the Board of County Commissioners accept the petition to rename a private right-of-way, Tree Line Loop, to Lamar Trail North, located in Section 15, Township 11 North, Range 20 West, in the Carlton Heights North Subdivision. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Hearing – Planning and Zoning Commission: Zoning District 41A Variance Request (west of Lakeside Drive in Lolo)**

Chairman Evans recessed the meeting of the Board of County Commissioners and convened the meeting of the Planning and Zoning Commission. Planning and Zoning Commission members present were Commissioner Barbara Evans, Commissioner Bill Carey, Commissioner Jean Curtiss, County Clerk and Recorder/Treasurer/ Surveyor Vickie Zeier, County Public Works Director Greg Robertson, Citizen Member Ty Anderson and Citizen Member Clem Work.

Colleen Dowdall stated that the variance being requested is in a Citizen Initiated Zoning District. State statutes for those districts require that the development pattern be reviewed and approved by the Planning and Zoning Commission. The members of the Planning and Zoning Commission include the Board of County Commissioners, the County Surveyor, the County Clerk and Recorder and two citizens appointed by the Board of County Commissioners who reside in a Citizen Initiated Zoning District. Monte Sipe will give the details of this particular request in his staff report.

Commissioner Curtiss stated that Missoula County does not have a separate elected Surveyor, that position has been combined with the Clerk and Recorder/Treasurer elected position. As Vickie Zeier cannot serve in two positions, the County Public Works Director has been appointed to the Commission.

Monte Sipe, Office of Planning and Grants, presented the staff report.

Wesmont Builders/Developers, Inc., represented by WGM Group, Inc., are proposing to create Willowbrook Meadows, a 33 lot subdivision on 13.35 acres of a parcel 38.27 acres in size, leaving a 24.92 acre remainder. Additionally, the applicant is requesting a variance to the Zoning District 41A minimum lot size requirement. The presentation will discuss both requests and their relationship to each other. The property is located on the west side of Lakeside Drive in Lolo, north of Block 1 of the Lake View Addition.

A PowerPoint presentation with photos of the area was given to familiarize the Board with the site.

Staff is recommending approval of the subdivision with 18 conditions. This proposal was presented to the Consolidated Planning Board on December 16, 2003. At the outcome of that public hearing, the Planning Board recommended denial of the subdivision by a vote of 4 to 1, with 3 abstaining.

The 2002 Lolo Regional Plan land use designation for the property is Urban Residential with a density of up to 4 dwelling units per acre for those portions above the 100 year floodplain and Open and Resource, one dwelling unit per 40 acres, for those portions located in the floodplain.

The parent parcel contains approximately 38.3 acres of land. The applicant has provided a flood area map based on a flood elevation study which shows 8.82 acres of the parcel are outside of the floodplain and would have a land use designation of Urban Residential – 4 dwelling units per acre. The rest of the property (29.48 acres) is Open and Resource – one dwelling unit per 40 acres. Using these area calculations and the land use designations from the Lolo Plan, 35 dwelling units would be permitted on the entire parent parcel.

The applicant is proposing to develop 13.35 acres of the parent parcel into 33 lots and the rest as a remainder with one existing dwelling. The calculated gross density of the proposed 33 dwelling units on 13.35 acres is 2.47 dwelling units per acre. The calculated gross density of 34 dwelling units on 38.3 acres, which includes the remainder, is 0.88 dwelling units per acre.

The property is zoned ZD 41A, 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. All of the lots except Lots 19, 22, 23 and 25 are less than 10,000 square feet. The applicant is requesting a variance from the minimum lot size requirement. The Planning and Zoning Commission and Board of County Commissioners hear variance requests to Citizen Initiated Zoning Districts in conjunction with a public hearing.

The ZD 41A variance request will be addressed in more detail at the end of the presentation. Staff is recommending a condition of subdivision approval that a variance to the 10,000 square foot minimum lot size requirement must be reviewed and approved by the Planning and Zoning Commission and the Board of County Commissioners prior to final plat approval. The applicant has chosen to have this request heard today.

The property is accessed via Lakeside Drive, a paved County maintained road with a 24 foot surface width and no curb and gutter. Six internal roads are proposed to serve the residential lots. Golf Drive, Pitch & Putt Lane and the southern portion of Adison Court are proposed as County roads and the remaining roads are private short courts. The applicant estimates 231 to 330 automobile trips per day are anticipated when the subdivision is fully developed.

Missoula County Subdivision Regulations require each lot to abut on and have access to a public or private street or road. Lot 33 access is proposed via a 20 foot private access easement across the proposed parkland south of Golf Drive. Staff is recommending that Lot 33 be eliminated from the proposal and that the land be included within the park/common area. Other concerns with Lot 33 will be addressed later in this presentation.

Missoula County Subdivision Regulations prohibit dead-end streets. The applicant is not proposing a turnaround at the end of Pitch & Putt Lane and has requested a variance to this standard. Public Works does not support the variance request. Staff is recommending denial of the variance request and has recommended a condition that an approved turnaround be provided at the end of Pitch & Putt Drive.

The entire length of Adison Court was initially proposed as a short court. However, the road exceeded the maximum length of 200 feet and the maximum number of lots permitted to be served by a short court. Subsequently, the developer has designed the first 120 feet of Adison Court with a 32 foot pavement width within a 60 foot easement. The remaining 192 feet is designed as a 20 foot wide paved short court. Public Works and Missoula Rural Fire District recommend a turnaround be required on this road to allow for maintenance and emergency services. Staff is recommending that a turnaround be installed on Adison Court, as approved by Public Works and Rural Fire.

Four private short courts are being proposed – Perry Place, Kate Court, Adison Court and Blaine Drive. The courts are proposed as 20 foot wide paved surfaces with curb and gutter within 28 foot wide common areas, to be maintained by the individual lot owners on a pro rata basis, based on benefit. Staff is recommending that a 28 foot wide private access and public utility easement is designated on the face of the plat for each short court. No specific standards for off-street parking on short courts are identified in the Subdivision Regulations. Due to the fact that lots fronting short courts will not provide on-street parking, staff is recommending a condition that all lots fronting on a short court have a required 20 foot front yard setback to allow for off-street parking in front of the house.

There is currently a 5 foot paved walkway along the west side of Lakeside Drive and a 5 foot paved walkway along the north side of Golf Drive abutting the subdivision on the east. Missoula County Subdivision Regulations require a system of pedestrian and/or bicycle circulation and easements for boulevards in all subdivision outside the Urban Growth Area served by public roads. The applicant has requested a variance from this requirement and is proposing 5 foot wide curbside sidewalks on Golf Drive and Pitch & Putt Lane and a 5 foot wide asphalt walkway along the west side of Lakeside Drive where it abuts Lot 1. Staff is recommending conditional approval of the variance request. Staff is recommending that 5 foot wide concrete boulevard sidewalks be installed on both sides of Golf Drive within the proposed 60 foot right-of-way easement and 5 foot wide concrete curbside sidewalks be installed on both sides of Pitch & Putt Lane and on that portion of Adison Court abutting Lots 7 and 14.

Water and sewer service is proposed to be provided by RSID 901, Lolo Water and Sewer District. Water and sewer mains are located along Lakeside Drive and Golf Drive and the proposal is to extend water and sewer mains throughout the subdivision. Public Works stated that the proposed water and sewer service for this subdivision are located in Lakeside Drive and that the applicant needs to petition the Board of County Commissioners for inclusion into Rural Special Improvement District (RSID) 901.

The Missoula Rural Fire District will serve the subdivision and a fire station located approximately 2 miles from the property. Fire hydrants are proposed throughout the subdivision.

The park area requirement for the subdivision 30,906 square feet or 0.71 acres. The applicant has proposed to dedicate parkland that includes a pond/slough and riparian area at the southern and western portions of the subdivision and a riparian area running in a north/south direction between Lots 4-6 and 7-10. The area of the proposed parks is 4.87 acres. The County Park Board stated that this parkland would be better suited as common area, owned and maintained by the homeowners in the subdivision. Staff recommends a condition of approval that the park areas be labeled as common area on the face of the plat and that maintenance of the common area be provided for in the covenants.

A large portion of the proposed site and remainder are located within a FEMA designated 100 year floodplain or areas determined to be within the 100 year floodplain based on elevation data. In the event of a 100 year flood, these locations would be inundated by rising groundwater and potentially surface floodwaters from the Bitterroot River floodplain.

In order to provide more buildable areas on the lot, the applicant proposes to fill portions of the 100 year floodplain, which are depicted with shading on the plat. The remaining portions of the 100 year floodplain are proposed as riparian and surface water areas to be dedicated as parkland.

The applicant has not submitted a detailed study or engineering design to show how much fill is necessary, how the proposed fill would impact the existing 100 year floodplain or where new additional flood storage areas would be located. Staff is recommending a condition that the developer submit a floodplain development permit application prior to any development or grading and that the application shall include a hydraulic study by a registered professional engineer documenting the probable effects caused by the proposed development.

Development within a FEMA designated floodplain requires that future homeowners purchase flood insurance. Staff is recommending a condition that the developer obtain a Conditional Letter of Map Revision to the FEMA designated 100 year floodplain for all lots currently encumbered with this designation. Evidence that all lots have been removed from the FEMA designated 100 year floodplain shall be submitted to OPG prior to final plat approval.

Lot 33, while being primarily above the floodplain, must be accessed by a private driveway that would split a proposed park and cross an area with existing riparian vegetation that is located within the proposed park. This private driveway is also located within a 100 year floodplain. Physical access during flood events is not provided for. Staff recommends a condition of approval that Lot 33 be eliminated from the proposal.

The proposed park areas include ponds and riparian vegetation. The applicant has included a riparian resource management plan as Exhibit B attached to the covenants. The plan identifies two riparian areas on the property. Missoula County Subdivision Regulations state: "Except for road construction as provided for in (5) below, areas of "no improvements" of any kind shall be approved within the area of riparian resource, including fencing, except for those improvements which are outlined in the management plan and as approved by the governing body."

During a staff field visit after submittal of the application, it was determined that additional areas of riparian vegetation exist throughout the site. A pond with extensive riparian vegetation is in the location of Lots 19 and 20 and a portion of the cul-de-sac bulb. This pond is depicted on the plat as an area proposed to be filled. Riparian vegetation is present in the area of the depressions and floodplain on Lot 25 that is depicted on the plat as an area to be filled. Riparian areas are located along sloughs and depressions throughout the remainder of the property as well.

Based on existing riparian resources within the areas described above, staff is recommending that Lots 19, 20, 25 and 33 be eliminated from the proposal and that the remainder is included within the subdivision as a lot.

No vegetation map was provided in the application packet. Staff recommends that a more detailed field survey and a new riparian management plan reflecting this new survey is provided to identify surface water, areas of riparian resource and wetlands and include mitigation to insure their preservation. In order to minimize impacts to riparian areas, redesign or removal of some lots and roadways and "no build" zones may be necessary once the new riparian resource field survey and riparian resource management plan is completed.

Condition 5 requires review of the private road maintenance agreement by the County Attorney's Office. Condition 7 requires review of the fire hydrant placement by the Missoula Rural Fire District. Condition 16 requires amendment to the covenants restricting basements and requiring lowest finished floor elevation and mechanicals to be 2 feet above the base flood elevation. Condition 17 requires amendment to the covenants stating that certain provisions may not be modified or deleted without governing body approval. Condition 18 requires approval of a revegetation plan for all disturbed sites by the Missoula County Weed Board.

The applicant has requested three variances, two which have already been mentioned. The third variance request is for the Golf Drive cul-de-sac to exceed the 600 foot maximum standard to allow a 608 foot cul-de-sac. Staff is recommending approval of this variance.

Ten public comment letters have been received in regard to this subdivision request and are attached to the back of the staff report. One additional comment letter from the Clark Fork Coalition was received after the staff report was prepared.

### ***Zoning Variance Request***

Zoning District 41A was created on May 23, 1984. The district specifies single family residential uses, grazing, horticulture, agriculture and timber-growing activities. The minimum lot size standard for this district is 10,000 square feet. The applicant is requesting a variance to reduce the minimum lot size to 6,250 square feet, the smallest lot proposed for the subdivision. No standards for density or cluster developments are specified in the zoning district. As previously noted, large portions of the property are located within the 100 year floodplain. The property also contains large areas of riparian vegetation which require protection under the Subdivision Regulations.

The proposal is being developed consistent with the Suburban Residential land use designation the Lolo Regional Plan recommends. The Zoning District was established 18 years ago, prior to the adoption of the 2002 Lolo Regional Plan. The prior plan, the 1978 Lolo Land Use Plan, designated portions of the proposed development site as Residential with a recommended density of 6 dwelling units per acre.

The reduced lot size will allow the applicant to develop the site at the densities contemplated in the Lolo Plan, while minimizing impacts to the 100 year floodplain and riparian areas. The subdivision lots are proposed for connection to the RSID 901 Lolo Water and Sewer District. Larger lots are not necessary to comply with State and local health regulations for sanitation.

Staff is recommending approval of the variance request based on the findings of fact contained in the staff report and the following two conditions:

1. The variance is only valid upon preliminary approval of the Willowbrook Meadows Subdivision and the final plat being recorded. If the subdivision is not preliminarily approved or the final plat is not recorded, the variance will become null and void.
2. The variance is approved with the understanding that the lots will be developed as proposed on the preliminary plat for the Willowbrook Meadows Subdivision. Minor modifications and amendments, as required to comply with subdivision approval, will be allowed.

Seven public comment letters have been received in regard to the zoning variance request and are attached to the back of the staff report.

Nick Kaufman, WGM Group, Inc., developer's representative, stated that Mark Peterson, Registered Professional Engineer; Perry Ashby, proposed developer of the project; and Pete Pettersen, owner of the property since the mid-1970's, were all present. Monte's presentation seems to leave the impression that this subdivision is being proposed in a 100 year floodplain completely covered by riparian vegetation. This subdivision is being proposed in its location because most of it is outside the 100 year floodplain and identified riparian vegetation. The aerial photo shows the community of Lolo, Montana which has a public sewer and water system and an elementary school. It has an existing pattern of development. When John Hayden did major developments in Lolo, he did things a little differently than they are done today. Mr. Hayden excavated lakes in the 100 year floodplain and put homes all around the lakes, so there is no riparian vegetation there anymore. Lawns go all the way down to the lake. Mr. Hayden used the material dredged from the lake to create the pads for the homesites. In the 1980's, Citizen Initiated Zoning District 41A was adopted with 10,000 square foot lots. That same excavation could be continued on this property to create the same kind of lakes others in Lolo enjoy, raise the property, which is already outside the 100 year floodplain and there would again be lawns that go all the way down to the lake and no riparian vegetation with 10,000 square foot lots. The Lolo Comprehensive Plan, adopted in 2002, took over 7 years of careful planning and public participation to develop. This land was designated at 4 dwelling units per acre because it has good capability and suitability for development. No development is proposed inside the 100 year floodplain and riparian area. Development is proposed in the area designated by the 2002 Lolo Plan as 4 per acre. The FEMA designated floodplain is a small finger along the southern edge of the property. Mr. Pettersen had his site mapped when he was contemplating a golf course and it was discovered that there are small areas that are half a foot below the elevation of the 100 year floodplain and other areas that are above the floodplain. None of the areas proposed for development are significantly below the 100 year floodplain; it is all half a foot to a foot below, with most of it outside the 100 year floodplain. The intent is to cluster the homesites in the area that is mostly outside the floodplain and preserve the rest of the property in riparian vegetation and flood storage. Because there are small portions of lots inside the floodplain, they propose to use a small amount of fill in those area, but for the most part, the subdivision is outside the 100 year floodplain. Even those portions outside the 100 year floodplain will be filled so that the finished floor elevations are 2 feet higher than the 100 year flood elevation to provide an additional margin of safety while preserving the riparian vegetation and sloughs. They are not proposing lake, lawn, home. They are proposing slough, pond, riparian vegetation, home. They are also proposing to create a pond in the northwest corner to mitigate any loss of floodplain or flood storage in the smaller filled areas. For close to 30 years, the designated Comprehensive Plan for this property has been six dwellings units per acre on the eastern portion and Open Space toward the back of the property. In the mid-1980's, a large area in Lolo was rezoned by citizen initiative to ZD 41A and ZD 41B. Mr. Pettersen's property was designated by the 1978 Lolo Land Use Plan at 6 dwelling units per acre and is zoned 4 dwelling units per acre. Over the entire parcel, the density is 0.88 dwelling units per acre. It is not proposed to be developed at either 4 or 6 dwellings per acre. They are proposing to develop that portion of the property that is mostly outside the 100 year floodplain and zoned and planned by the Lolo community for more than 30 years. The FEMA adopted Flood Insurance Rate Map shows that small portion of the slough being in the 100 year floodplain. The rest of the site, on the adopted floodplain map, is outside the 100 year floodplain. Lolo Greens has almost the exact same topography as this site, perhaps even a little lower. The Commissioners approved that subdivision a few years ago along Lakeside Drive. This development is concentrated on the southern portion of the property with existing residential development on two sides. The 2002 Lolo Plan took land that was designated as Open and Resource and redesignated it at 4 dwelling units per acre. It would not make sense for professional planners and the Board of County Commissioners to approve such a change unless it was appropriate for the site. The lots in Lolo Greens No. 1 and along Hayden Lake are 10,000 square feet because there were no riparian regulations when they were proposed. This subdivision proposes to preserve the riparian vegetation, to stay mostly out of the 100 year floodplain and take the entitled development rights for the entire site and concentrate them on the southern portion of the property. Mr. Pettersen was a partner in the recently approved Lolo Greens. The plat of Lolo Greens clearly shows future development and the portion of the property not developed was allowed as a remainder. Public sewer and water serve that subdivision and a park was dedicated to the County as part of Lolo Greens No. 1. This proposal will use the private road and public utility easements which were dedicated with Lolo Greens No. 1 at Pitch & Putt Lane and Golf Drive. An aerial photo of the site was shown. This subdivision preserves the slough/pond and provides a Riparian Management Plan for the entire property. The remainder of the site, except for two additional homesites, would remain in its natural state, riparian vegetation with an additional pond. The question that needs to be asked is what is a reasonable use for this site, based on floodplain, Comprehensive Plan and zoning. The best use is to cluster homesites as proposed and preserve areas in the 100 year floodplain and preserve and enhance riparian vegetation. There are a significant number of Green Ash trees on the site, not native riparian vegetation. They have no problem with doing a Riparian Management Plan for the entire property, work to enhance the native vegetation and remove some of the invasive species. The homes being proposed are the same



type as in Lolo Greens. Planning for this proposal began in January, 2001. At that time, Brian Maiorano was the Floodplain Coordinator. Mark Peterson and Brian met to determine if it would be feasible to develop this piece of property. They both came up with the professional recommendation that the finished elevation should be two feet higher than the elevation of the 100 year floodplain. They arrived at what the elevation of the 100 year flood would be. Mark gave his firm the recommendation that this property could be developed, that it was not at significant risk from a 100 year flood event, so they proceeded with the planning. Mr. Pettersen, Mr. Ashby and WGM Group would not develop a piece of land that is all riparian and all within the 100 year floodplain. Some of the low areas will be filled with approximately seven-tenths of a foot of fill. Above that, it will be filled so the pad will allow the finished floor to be 2 feet higher than the floodplain. The only thing that is coming out of flood storage is that seven-tenths of a foot. The fill above that never was storage for a 100 year flood, which will be mitigated by the pond in the northwestern portion of the property. Staff recommends removing Lots 19 and 20. Mr. Pettersen, when he did the golf course, excavated for sand from the area of Lots 19 and 20. Groundwater came up where the excavation was done and created a wetland, however, normal wetlands/riparian areas don't have square corners as this does. It is not included in the riparian management plan and it probably should be. He does not want to remove these two lots because a hole was excavated for sand. The hole should be able to be filled and the two lots included while enhancing the riparian vegetation on the perimeter of the subdivision and creating additional wetlands as mitigation. Staff has also recommended that Lot 33 be eliminated. This is some of the higher ground on the whole development. It adjoins residential development on two sides and only has sensitive riparian vegetation on one side. The concern is with the road that would access the lot. They would like to work with staff and do a riparian management plan for the whole property and leave these lots (19, 20 and 33) so there is not an overall decrease in the quality of riparian vegetation on the entire site. The other lot recommended to be eliminated is Lot 25. Again, they would prefer to do a riparian management plan for the entire property. It was not done for the remainder because it is only required for those areas proposed to be subdivided. The reason they are requesting the variance from the minimum lot size in the Zoning District is because that zoning district was created anticipating a drag line dredge creating a lake and pads with 10,000 square foot lots. That is very insensitive to the vegetation on this site. The proposal has the smallest reasonable lot sizes that would still allow for a single family home, back yard space and development in conformance with the rest of the neighborhood. It is a cluster development done to preserve riparian areas and keep building sites out of the 100 year floodplain. Should the variance be denied, the subdivision could be designed with 10,000 square foot lots by extending the lot lines into the riparian areas and make them "no build" zones. It is better to have them part of an agricultural unit and managed than to have a riparian area as part of someone's back yard. The lots can be designed at 10,000 square feet if the Planning and Zoning Commission feels that is better for the community and in conformance with the adopted Growth Policy. However, the 2002 Lolo Plan does provide a better option by clustering homesites, staying out of the floodplain and preserving riparian vegetation.

Clem Work asked if the 2 feet that would be added would bring all crawlspaces out of the groundwater level so there would not be any problems such as what happened at Mullan Trail?

Nick Kaufman stated that was correct.

Colleen Dowdall stated there is a separate process for floodplain permits. The Board of County Commissioners would hear an appeal if the floodplain permit is denied. If the Board of County Commissioners denies the appeal, there would not be areas to build on without the fill.

Commissioner Curtiss stated that a Letter of Map Revision is recommended as a condition of approval. Would the low areas have to be filled and go through the floodplain permit process before the final plat.

Colleen Dowdall stated that she is not the attorney who handles floodplain matters but her understanding is that whether it is a FEMA designated floodplain is not the question in requiring a permit. If it is an area that is prone to flooding, a floodplain permit may also be required. The Letter of Map Revision would not affect that part as it is not a designated floodplain right now.

Nick Kaufman stated the staff report said the applicant did not provide information on upstream and downstream effects of the fill. Typically, final plans are not provided at preliminary review. If the subdivision and variances are approved, they will go forward and apply for the necessary floodplain permits. Part of the permitting requires them to address upstream and downstream impacts. There are other places on the property that are lower than the elevation of the 100 year floodplain. Those areas will require a floodplain permit but not a Letter of Map Revision.

Ty Anderson asked if the other lots already developed along the slough and in Lolo Greens were a part of Zoning District 41A.

Monte Sipe stated there is a map of the Zoning District included in the application packet. The Zoning District stops at the southern boundary of the property and does not include those lots south of the slough.

Ty Anderson asked what the average lot sizes were for those lots south of the slough.

Monte Sipe stated the majority of the lots are 10,000+ square feet.

Vickie Zeier stated that when people are giving their testimony, she would like them to address how they feel about the lot lines being redrawn on this subdivision to encompass riparian areas in order to make the lots meet the 10,000 square foot minimum.

Mark Behan, 10350 Lakewood Place, stated that a few weeks ago Mike Sehestedt spoke to area residents at the request of the Lolo Community Council, to tell them what options they might have given that the Legislature has said the Lolo Plan, which they spent many years developing, was unenforceable, combined with the elimination of building permits. His question was if this put the development and character of neighborhoods in the hands of developers instead of residents and citizens. Mr. Sehestedt's answer was essentially 'yes.' Alternatives would be incorporation of Lolo and development of their own regulations or zoning. He wondered if citizens' ability to control the character of their neighborhoods through zoning would be future eroded by approving these variances. A part of the character of the neighborhood is 10,000 square foot lots, not just to bring them further from the lake, but to allow adequate setbacks, spacious back yards

and separation between homes. Another question is more development in a wetland, defined as an area in which groundwater appears on the surface a portion of the year. In this area, groundwater appears all year round, with its sloughs and ponds. This zone is a part of the Lolo Lakes floodplain. The water that appears in the development area is integrally connected with the Bitterroot River. The history of the area is decades of errors on the part of the Commissioners and the developers. Residents are now facing serious problems, one of which is the further destruction of the dyke that Mr. Hayden built many years ago, which has already failed in major sections. It is unlikely the FEMA maps are accurate because of the constrictions created by the sewer plant. This spring during a 5 year flood event, he had water in his crawlspace and he is above the 100 year floodplain. The proposal will create pavement and homes in the floodplain. How much will this exacerbate the height of water levels in Hayden Lake during a high water period. There is a direct connection by a culvert from the slough into Hayden Lake. These questions need to be answered by qualified expert hydrologists who can report on the effects of pavement and houses on the Lolo Lakes floodplain. He encouraged the Commission to deny the variance because the zoning was done by Citizen Initiative which is the last remaining capability residents have to control the nature of their neighborhoods.

Commissioner Curtiss stated there will be two decisions made today. One is the variance to lot size and the other is approval of the subdivision. Would Mr. Behan prefer the lots be 10,000 square feet even if that would mean that lot lines would be extended into the riparian area.

Mark Behan stated that a few years ago, Brian Maiorano met with a group of citizens from the Lolo Lakes area to address mitigation of some of the problems created by poor planning in the past, especially with the dyke. At that time, Brian said his recommendation was for eight homes, not 32.

Vickie Zeier stated that if the Commission says no to the variance, the developer has said that he will extend the lot lines into the riparian area. Would Mr. Behan prefer to see that?

Mark Behan stated that he was not qualified to answer that question. He did not know what development on that property, wetlands that are a part of a floodplain, would do to the existing homes in the neighborhood. The input of a qualified hydrologist would be needed to answer the question. The Commissioners authorized the preparation of a two foot contour interval map of the region. This should be carried one step further. He did not know what all this pavement and concrete and houses would do to the run-off.

Commissioner Carey asked if Mr. Behan knew the elevation of his home in relation to the proposed home.

Mark Behan stated that he did not know the exact elevation but everyone on Lakewood Drive is above the 100 year floodplain. The majority of homeowners have water in their crawlspaces in a 10 year event.

Ray Vandelac, 1204 Lakeside Drive, stated there is developable land on this property, but to take 33 lots and make them bigger is going to encroach on a significant riparian zone, which is not feasible. Problems already exist in other area in maintaining wetlands and the loss of wetlands impacts all aspects of human and animal life. Mr. Kaufman proposes that the entire 13+ acres is developable property and he would dispute that fact. To raise land to provide a building pad is acceptable, but that water that is currently being absorbed by the land has to go somewhere else. Water exists all year long on significant portions of the property and it seems ludicrous to dedicate that as parkland. Parkland should be able to be used by humans. That land would be better qualified as a swamp. It is surrounded by dense vegetation and covered by algae and may even pose some degree of health risk. The properties to the south are substantially higher in elevation and the land is designated at 6 to 8 dwelling units per acre. It is significant that this land was zoned by a vote of the people, who made the determination, as did planning staff, that that property was best suited for four dwellings per acre. This property also has access problems. A 60 foot right-of-way is needed to access it and that is simply not available on Golf Drive. The maximum distance between two adjacent houses is approximately 88 feet; two 20 foot setbacks and 60 feet of right-of-way will not fit. A 60 foot right-of-way would come within 5 feet of one house and garage on Lot 6 of Lolo Greens and approximately 9 feet from another garage on Lot 5 of Lolo Greens. In addition, the right-of-way for Pitch & Putt Lane would encroach about 15 feet on the north boundary Lot 1 of Lolo Greens. The traffic patterns will be severely impacted by the addition of these houses. The traffic on Lakeside Drive now is marginally safe. There are no shoulders or paved walkways. The speed is posted at 25 mph, but no one obeys that.

Commissioner Curtiss stated that Mr. Vandelac's comments are more in regard to the subdivision itself. The hearing that is currently open is in regard to the variance request. His comments regarding the subdivision should wait until that public hearing is opened.

Ray Vandelac stated that the variance to lot size is out of keeping with the remainder of the neighborhood. Everything in the area is 10,000 square feet or larger.

Elmer Palmer, Lolo Community Council, stated that this development has generated more interest than most anything else that has been proposed in Lolo. Mr. Kaufman has stated that the lot lines could be extended into the riparian area. If the number of lots is reduced to 20, the 10,000 square foot lots could easily be achieved without encroaching into the riparian areas. It is appalling to the neighbors to reduce the lot size from 10,000 square feet. That was the most common comment from neighbors, they want 10,000 square foot lots.

Jennifer Johnson stated that she lives on Lot 1 of Lolo Greens. Her property will be affected by the Pitch & Putt Lane right-of-way. A main concern is flooding. During the spring there is a fair amount of standing water in her back yard. There is even more standing water between Lots 2 and 3 of Lolo Greens. Another concern is vandalism in the area; there was quite a bit of vandalism last summer. The area needs increased police presence already. Another concern is the fact that there is no place for children to play. Adding 33 homes will increase the number of children and there is no usable parkland being proposed. The areas shown as parkland are not usable, it is more like swamp land. Traffic is a huge concern. The speed limit on Lakeside Drive is 25 mph but is not abided by or enforced in any way. She was unaware of how the right-of-way for Pitch & Putt Lane would affect her property line. When they purchased their home, they knew the minimum lot size was 10,000 square foot. There is a lot of wildlife in the area and having smaller lot sizes would be a big concern.

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Dennis McCrea, 907 Lakeside Drive, Lot 4 of Lolo Greens, stated that 10,000 square foot lots are known and expected in the area, one of the reasons he purchased a home there last spring. That minimum size should be continued on this development which could control the number of lots that are allowed. If the purpose of decreasing the lot size is to cluster the homes, which is a good idea, then there should not be any more development allowed on that parcel. The remainder should not be allowed to be developed in the future. Some of the past decisions made in the area were not good, which is okay as long as something is learned from them. Common sense says that floodplain and wetlands are not good places to build houses and if fill is used, common sense says that the water has to go somewhere. He saw a lot of standing water in that area and assumed it must be a floodplain. He also has concerns about the proposed curb, gutter and sidewalks along Golf Drive.

Steve Trollope, 212 Glacier Drive, stated that granting the variance would be an injustice to the Lolo community. The roads in the area are already heavily traveled and no one pays any attention to the speed limit. He fears for the safety of children going to and from school. His understanding is that a variance may be granted when there is a hardship and he has yet to understand what that hardship might be. He is opposed to the entire subdivision. The development will impact the wildlife. It will have a negative impact on the Lolo community.

Ty Anderson asked if there would be a taking of property from existing Lolo Greens lots to construct the road and right-of-way.

Nick Kaufman stated that the plat of Lolo Greens shows 60 foot right-of-ways for Golf Drive and Pitch & Putt Lane. The covenants for Lolo Greens No. 1 allowed people to build up to those road easements. If a person built to that easement, it was their own choice. The plat for Lolo Greens showed future development. The real estate agent that was a partner for Lolo Greens, Kasey Kelly, lives on Lot 5 and wrote a letter in opposition to this subdivision. A real estate agent that is selling lots in a subdivision and owns a lot in that subdivision, should accurately represent what is on the plat and what the future potential development of the property is. The Lolo Greens plat has easements for both Pitch & Putt Lane and Golf Drive. If the road were actually built within the entire 60 foot right-of-way, then the sidewalks would be as close to homes and garages as Mr. Vandelac indicated. Those homeowners were, or should have been, aware of that when they purchased their homes, that were their responsibility. Many comments were made about the deer, the pheasants, the riparian area, the wetlands; the water has to go somewhere. The hardship that is the basis of the variance request is that there are water features on the property, that a portion of the property is within the 100 year floodplain. They want to cluster the homes to minimize the impact on surface water flow and wildlife. This is not a flat piece of land, it has physical constraints which are the basis of the hardship. The Zoning District only calls for 10,000 square foot lots, it does not give a minimum lot width. The minimum lot width in the Subdivision Regulations is 60 feet. There are also no setback specifications in the Zoning District. Having a lot of 10,000 square feet in this sensitive area does not make sense. Because development is occurring on the surface of the property, it should not have any impact on the ground water. Mr. Pettersen, who has owned the property since 1974, could address the potential of surface water on the property. In looking at various aerial maps taken during different years, surface water can be seen in those areas that are identified as water features. The Comprehensive Plan and floodplain and riparian regulations all offer proof that the area outside the floodplain is suitable for development at 4 dwellings per acre. By granting the variance, it will lessen the impact on what people have said is most important to them; preserving wildlife and wildlife habitat, not interfering with the floodplain and preserving riparian areas.

Vickie Zeier asked what the parkland dedication requirement was for a development of this size. If the lots were made larger to meet the 10,000 square foot minimum, would that reduce the parkland to below the size required.

Monte Sipe stated this development with 33 lots would require 0.71 acres and the developer is proposing 4.87 acres of parkland. The calculation is 11% of the proposed area. 13.35 acres of land at four dwelling units per acre would net approximately 58 units, assuming the entire area is developable. The area depicted for development is 8.82 acres at four dwelling units per acre would net 35 units.

Nick Kaufman stated that road easements come out of the lot, they are part of the lot. The lot may be 10,000 square feet, but the usable area is reduced by the road easements. County roads are all easements and that right-of-way may be used to calculate density. He can do 10,000 square foot lots on this development. A portion of the lots may go into public road right-of-ways or the riparian area, but good design dictates a certain area for building sites which has been provided. The lot area can go into the road easement or the riparian area, but it is not the best idea. The physical nature of this property creates the hardship.

Elmer Palmer asked if there was any reason why the lots could not be brought up to 10,000 square feet and the number of lots reduced.

Nick Kaufman stated his answers were not meant to disrespect the neighbors in any way. If he proposes a subdivision of 36 lots; 24 lots would be better. If he proposes a subdivision of 24 lots; 18 lots are better. If he proposes a subdivision of 18 lots; 12 lots are better. If he proposes a subdivision of 12 lots; 10 lots are better and so on and so forth. However, after many years of planning and public participation, the adopted Lolo Plan recommends 4 dwelling units per acre for the piece of land. He will not reduce the number of homes. He is a professional planner and has followed the rules and regulations on behalf of his clients. He has employed a professional ecologist, hydrologist and engineers to review this site. The staff has recommended 18 conditions and they agree with all of them except the ones that recommends removing 4 lots until a riparian management plan is done for the entire site. This is a good design that is enhanced by granting the variance. It is not enhanced by reducing the number of lots because more homes are needed in the Missoula community which don't need to be spread out over elk habitat. Homes should be concentrated in areas with available sewer and water in conformance with the Growth Policy.

Commissioner Curtiss stated that Lot 29 is 8,100 square feet but that doesn't include the street right-of-way. If that right-of-way is included, would that lot meet the minimum lot size of 10,000 square feet?

Nick Kaufman stated that lot would be 10, 800 square feet which would meet the minimum requirement.

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Commissioner Carey asked Mark Peterson how it is determined what effects putting 33 homes in this area has on the surrounding land, where does the water go, that this does not pose a threat from a 100 year flood.

Mark Peterson stated that his technical title is Hydraulic Engineer. There are actually a couple of issues involved. One is the floodplain issue itself, which has nothing to do with whether there are 2 homes or 30 homes there. There is a floodplain that is a function of the Bitterroot River. From his research, he would refer to this area as a backwater. The Bitterroot River doesn't flow through here. What is done here has functionally no impact on the flooding of the Bitterroot River. The only possible impact, which he and Brian Maiorano discussed at length a couple of years ago, is that some low areas may provide some storage. They have proposed to at least match the storage below the 100 year floodplain elevation. The other issue raised is what the impact of 2 or 20 or 30 or 50 homes will have on this site. That is his area of expertise. He wrote the circular that the Department of Environmental Quality uses for storm drainage. The primary issues in subdivision storm drainage are making sure that first, the water goes away from the houses and drainfields and to make sure that when it goes away, it doesn't create damage. He has had many discussions with Jeff Ryan, Resource Specialist with DEQ. Their opinion is that draining run-off from streets into wetlands or riparian areas is the ideal situation as opposed to what was done in South Missoula. All the storm water is collected and put in a big pipe then dumped into the Bitterroot River. The water goes away but good treatment for the water was not really provided. That was done because it was the best solution with what they had available to work with. In this location there is the ideal solution. The water is put in a low area where the sands provide good treatment. The vegetation will absorb whatever greases and oils may run off. This is connected to the groundwater that is then connected to the river. That is where the water goes away but it doesn't go away coming out the end of a big pipe dumping into the river. Reduction of peak flows and substantially improved treatment have been provided. Additional run-off is created by paving streets and building houses which has to go someplace. If it is taken someplace where some treatment can be provided, the effects of the peak flows have been reduced, which is the best that can be done. The only alternative that is better is to not build anything anywhere.

Commissioner Carey stated that there has been testimony that water was present in a crawl space during a 5 year event, which alarmed him. What would happen during a 50 year event. Does that pose a threat?

Mark Peterson stated that comment did concern him and he wants to do a little more research on elevation. This location is some distance removed from the Bitterroot River. The river goes up and down relatively quickly and the groundwater does not move at the same speed. He intends to look into that further. He felt it was more related to the connection between the river and the groundwater. They need to make sure that the elevation of the homes they install is at least as high as the elevation of some of the surrounding homes.

Commissioner Carey stated that if some homes are getting water in their crawl spaces during a 5 year event, two feet above the 100 year flood elevation might not be enough.

Mark Peterson stated the difference between a 5 year and a 100 year is a large volume of water, but because the Bitterroot River is fairly steep in this area, there is not a huge amount of elevation difference. The 100 year flood is a peak and it occurs for a limited period of time. Groundwater does not rise or fall as fast as the river. The difference between a 5 year and a 100 year would certainly be much less than 10 feet.

Mark Behan stated that the difference between a 5 year event and a 10 year event is 2 inches of water in his crawl space. Asphalt and concrete do not absorb water, it will run off. At the south end of this property there is a slough. The slough is connected to Hayden Lake by means of a culvert. If more of that water runs off or the ground water rises, the water will rise in the slough and more water will flow into Hayden Lake. There is no place else for it to go. The area proposed for development is a wetland.

Ray Vandelac stated that he lived on Hayden Lake. His house sits approximately seven feet above the normal mid-year lake level. Last year he had water that was three feet higher than the normal lakeshore. Between his property and the property to the south there is a 10 inch culvert that comes under Lakeside Drive that drains the north portion of Mr. Pettersen acreage. Part of the property shown as a remainder is substantially lower. That water runs out of that culvert into Hayden Lake even into early August every year. There is significant groundwater coming into Hayden Lake without additional development. There is another house that had to install a float activated pump to pump water out of their crawl space and he observed a large volume of water being pumped onto Lakewood Place. To say that this will have no additional impact on groundwater seems inconceivable. Something that he doesn't understand is the area shown as parkland. Is that to be usable space or considered open space in relation to development.

Colleen Dowdall stated that Subdivision Regulations define all the different kinds of parkland and their purposes. Some parkland can be improved for human use but it can also be dedicated wetlands/riparian areas. There are riparian regulations to protect those resources which can be done by putting them in common area or a park. The regulations do not require that it be usable parkland. That is a decision that the Board of County Commissioners makes.

Ray Vandelac stated that Mr. Kaufman alluded to playing golf on the property to be developed. However, the golf course property is not being developed, this is property between Lakeside Drive and where the golf course existed. Significant portions of it are quite a bit lower than the golf course property. Most of the golf course property was north and west of the barn. He is not a professional hydrologist, but significant portions of this property have standing water at different times.

Chairman Evans stated that the recent ruling by Judge Harkin indicated that accepting public comments has to be done, but no guidelines were given as to how long it had to go on. She will allow everyone who has something to say, say it, but recognize there are additional agenda items. She asked if people would make their comments as brief as possible.

Pete Pettersen stated he is the owner of the property which he purchased in 1970. He wanted to make some important comments in terms of water. There is a culvert between the south end of his property and the lakes. Something that is different between the two side of Lakeside Drive is that this lake does fill up when the river is high and it has a hard time getting out. As that lake fills up, the water table can rise to some of these houses, as indicated by water in crawl spaces. The interesting thing on this side of the property is that all of the water, including the very north end, goes to the areas dug

out by Mr. Hayden and fills up a number of lakes Mr. Rossignol has. It goes through about 8 different pieces of property then comes back into the Bitterroot River approximately a mile and a half to two miles north. Having owned the land for 33 years, he has spent a lot of time on it. Standing water does appear in the spring. It appears because the ground is frozen and covered with snow. The snow melts but the ground is still frozen so that water appears on the surface for a few days. There is standing water 365 days a year in the area of the slough, there is a spring that feeds it, but there is not standing water on other portions of the property. Some parts of the former golf course are proposed for this development on ground that is higher than most all of the golf course. The water on this property does drain very rapidly. In over 33 years there has never been standing water. The golf course was used from the middle of March to almost the end of November.

Mark Behan stated there is a culvert that goes from the slough to Hayden Lake. That is what he is concerned about. Water is going to have to drain somewhere. It drains into the slough then into Hayden Lake. The lag time between the rise of the Bitterroot River and the rise of Lolo Lake is 48 hours.

Vickie Zeier stated that she is looking at the 10,000 square foot minimum lot size. Because most of the lots abut open space, there is a perception that they appear larger. If the variance is denied, the developer will extend the lot lines to make them 10,000 square feet. That will ultimately affect the riparian area and create several different ownerships within the riparian area, which is not desirable. Because of that, she is supporting the variance request.

Ty Anderson stated that he did not understand if Mr. Pettersen's comment about spring water referred to the time of year or if there was actually a spring there.

Pete Pettersen stated there was actually a spring in that location.

Clem Work stated that he agreed with Vickie's comments about the perception of the size of these lots. Redrawing the lot lines would remove the need for the variance, but would result in the same density. He would also support granting the variance.

Colleen Dowdall stated that Nick mentioned the right-of-ways and whether they were used to calculate lot size. She recalculated all the lots using the right-of-ways. If the variance is granted, it needs to be clear that it is required for specific lots only, including 18, 13, 12, 11, 10, 9, 8, 5, 6 and 33. All of those lots, except for Lot 11, have approximately 9,000 square feet. Lot 14, including right-of-way, has 12,528 square feet and Lot 7 has 10,993 square feet. The request was made to allow lots to go down to 6,250 square feet, which really changes the standard of the zoning. If the variance request is approved, the motion needs to include only those lots smaller than 10,000 square feet.

Monte Sipe stated that is what the conditions reflect as recommended by staff. The reference could be that the request is for all lots necessary that don't meet the 10,000 square foot minimum.

Chairman Evans stated that would be simpler than listing lot numbers.

Colleen Dowdall stated that a variance should be granted to a legal description. She would be more comfortable if the actual lot numbers are listed.

Monte Sipe stated that there are recommended conditions for the subdivision that certain lots be eliminated, which may change the plat and the numbering of the lots.

Colleen Dowdall stated this would be a recommendation from the Planning and Zoning Commission. The Board of County Commissioners can make their decision on the subdivision first and follow the recommendation of the Planning and Zoning Commission to the extent needed, given their decision on the subdivision.

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

Ty Anderson stated that if a variance is granted but there are changes to the way these are lotted, what has been accomplished. It seems the cart is before the horse.

Colleen Dowdall stated that the Planning and Zoning Commission does not grant the variance; they give a recommendation to the Board of County Commissioners with regard to the variance, as required by procedure. Once that recommendation is made, the Planning and Zoning Commission adjourns and the Board of County Commissioners takes further testimony on the subdivision. They will move to either deny or approve the subdivision with conditions and then they will make a decision on the zoning variance.

Chairman Evans stated their decision on the subdivision may change lot numbering, but it doesn't substantially change what the Planning and Zoning Commission recommended.

Colleen Dowdall stated that this might not make much sense but it is the procedure outlined in the law.

Ty Anderson stated that he is being asked to grant or not grant a variance on this plat but the plat may be changed.

Colleen Dowdall stated that he is being asked to vote on whether or not he would recommend to the Board of County Commissioners to grant this variance.

Clem Work asked if this could be conditional on Monte's recommendation to delete certain lots.

Colleen Dowdall stated that is a function of the approval of the subdivision, not the variance.

Vickie Zeier moved that the Planning and Zoning Commission recommend to the Board of County Commissioners to approve the Zoning District 41A variance request to allow lots with a minimum lot size of less than 10,000 square feet, for

those lots listed on the preliminary plat of Willowbrook Meadows as Lots 5, 6, 8, 9, 10, 11, 12, 13, 18 and 33, subject to the findings of fact and the recommended conditions contained in the staff report. Clem Work seconded the motion.

Commissioner Curtiss stated that she would support the motion but she does respect the Citizen Initiated Zoning process. The fact that most of these lots would meet the requirement using the road easements should be taken into consideration. Many of the lots abut open space as Vickie pointed out. One of the purposes of the zoning was to not have houses too close together.

The motion carried on a vote of 6-1 (Ty Anderson opposed).

**Zoning District 41A Variance Request Conditions of Approval:**

1. The variance is only valid upon preliminary approval of the Willowbrook Meadows Subdivision and the final plat being recorded. If the subdivision is not preliminarily approved or the final plat is not recorded, the variance will become null and void.
2. The variance is approved with the understanding that the lots will be developed as proposed on the preliminary plat for the Willowbrook Meadows Subdivision. Minor modifications and amendments, as required to comply with subdivision approval, will be allowed.

There being no further business to come before the Planning and Zoning Commission, they were in recess.

Chairman Evans reconvened the meeting of the Board of County Commissioners and called for a 5 minute break.

**Hearing: Willowbrook Meadows (33 lots on 13.35 acres) – in Lolo off Lakeside Drive**

Chairman Evans opened the public hearing.

Nick Kaufman stated that he withheld his comments on the conditions of subdivision approval during his initial presentation. He would focus on them now. There are no problems with Conditions 1, 2 and 3. On Condition 4 he requested that the language be changed to read: "Language shall be provided on the face of the final plat and referenced in the covenants requiring all lots fronting on short courts within the subdivision to require a 17 foot front yard setback from the back of curb, subject to review and approval by OPG prior to final plat approval. Lot 6 front yard is on the east side of the lot."

Monte Sipe stated that there are no language changes for conditions listed in the Request for Commission Action. There was a discussion at Planning Board on changes presented by the applicant where they did not agree with staff's recommendation. Those were discussed at the Planning Board meeting and all those motions failed and in the end, Planning Board recommended denial, so no conditions were moved forward. The conditions originally recommended by staff are included in the Planning Board packet dated December 16, 2003.

Nick Kaufman stated that property lines will run to the center of the road. They want a 17 foot setback from the back of the curb.

Colleen Dowdall stated she would rather not measure from the property line because the short court that comes off Pitch & Putt Lane because the easement is encompassed within the lots.

Nick Kaufman stated they would agree to 20 feet from the back of curb. However, Lot 6 needs to have its front yard on the east side measured from the property line. It is preferred that both Conditions 9 and 10 be deleted and taken care of in Condition 12, which pertains to the riparian plan. There is no objection to developing a riparian management plan for the entire acreage. There is also no problem with making the remainder a lot as long as the density that is not used by the subdivision is allowed on that lot which was the remainder. He proposed a change to Condition 12 to read: "All areas of riparian resource, including those within the area proposed for additional flood storage on the remainder and Lots 19, 20, 25 and 33, shall be mapped and identified prior to placement of fill material or any grading to ensure their preservation. The area of riparian resource map depicting lot and road layout shall be subject to review and approval by the Board of County Commissioners prior to final plat approval and shall be attached to the riparian management plan." He would like to come back before the Board of County Commissioners with the riparian management plan and address the concerns raised on Lots 19, 20, 25 and 33. If at that time, the Board decides that any one or all those lots are not appropriate, then they will be deleted. Those were the only changes they would recommend.

Kasey Kelly stated she is the Real Estate agent Mr. Kaufman referred to earlier. She is not against development and lives on Lot 5 of Lolo Greens. When that subdivision was developed, they were required to install the culvert and walking path. The driveways of the two houses on the south side of Golf Drive come right to her house setback. They would have to remove the walking path and culvert. That would create a situation like Lakeside Drive without a place for pedestrians.

Steve Trollope stated he submitted a letter in opposition to the subdivision to OPG. He asked if there was any consideration given to the traffic on Glacier Drive. It is horrible and very fast. If this is approved, perhaps there could be more law enforcement. Was another access to this subdivision at a different location ever considered.

Dennis McCrea asked if the Lolo Greens subdivision was separate from this one. Why wasn't the roadway completed as shown on the plat with a 60 foot wide right-of-way with curbs and gutters and a boulevard sidewalk.

Monte Sipe stated that Lolo Greens is a separate subdivision. What is shown on the plat are the easements which generally do not show improvements. The improvements that exist are what was agreed upon through the variance process and preliminary approval of the Lolo Greens subdivision. The infrastructure on Golf Drive is in relation to the subdivision approval in 1999. On the portion of Golf Drive off Lakeside Drive that terminates at the Lolo Greens subdivision, the improvements that exist were what was approved in 1999. The subdivision was granted a variance for a 20 foot paved surface and required to do a walkway on the north side.



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Colleen Dowdall stated the improvements within the right-of-way are generally matched to the amount of traffic generated. At the time that Lolo Greens was approved, Golf Drive was going to access only a few lots. Now that there is future development, more improvements are required to serve those lots.

Dennis McCrea stated that knowing that future development was going to happen, why weren't the improvements required then.

Colleen Dowdall stated that no specific request for future development existed at that time; the size and scope of a future development was not known. There was no authority to require the developer of Lolo Greens to install improvements for future development that might not happen for a number of years.

Dennis McCrea asked if another access was every considered.

Nick Kaufman stated that it would not be prudent nor feasible to get another approach across the Bitterroot spur or a signalized access to Highway 93 at Glacier. Ms. Kelly's comment is correct that the asphalt path along Golf Drive will be removed but in its place will be two concrete boulevard sidewalks.

Commissioner Carey stated that he was still unclear about what should happen with the remainder.

Nick Kaufman stated that when Lolo Greens was approved, the rest of Mr. Pettersen's property was labeled as a remainder. Staff has recommended that the remainder on this subdivision be made a lot. Initially he opposed that requirement. He does not oppose it now with the exception that he wants it on the record that the density that is not used for this subdivision applies to Mr. Pettersen property. Mr. Pettersen can only use those two additional development rights if he goes through subdivision review. Staff's concern was that if it is left as a remainder, additional development could happen. The entitlements for this property are 35 homes. Make the remainder a lot but give it two additional development rights. Those cannot be used without going through subdivision review which would address concerns raised about riparian vegetation and floodplain. That seems reasonable. Condition 11 could be revised to state: "The remainder shall be included within the subdivision as a lot, with three development right, the existing house plus two." The rest of the condition should be deleted.

Monte Sipe stated that he did not see the concern with the language as it is written, understanding that if any further development was to occur on that, it would have to go through the subdivision review process. The designation of a "No New Building/No Fill" area would be addressed through that review process.

Colleen Dowdall stated the language would still have to be changed because it currently says that the entire remainder is "No Build/No Fill."

Monte Sipe stated that the only way that could be lifted would be a subdivision application for that lot.

Chairman Evans stated that the way it is written negates any building rights.

Monte Sipe stated the point of creating it as a lot versus a remainder falls in line with the recommendation for the riparian management plan. Without it being a lot, there is no assurance that those protection measures are there.

Nick Kaufman stated they are not arguing that point, they agree it should be a lot, but strike the second clause of the Condition 11. Simply state the remainder shall be included within the subdivision as a lot. He wants it on record that there are three development rights that could go with it, the existing home plus two.

Colleen Dowdall stated that whether it is a lot or a remainder do not affect the fact that further development rights are available. She felt Condition 11 could be revised as Nick stated. The lot will be part of the riparian management plan review to determine what is buildable. The density has nothing to do with the fact that the lot was created.

Ray Vandelac asked if previous comments from the variance hearing were being considered during this subdivision discussion.

Commissioner Curtiss stated comments made during the variance hearing would be considered.

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

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Article 3-2(6)(C)(i) of the Missoula County Subdivision Regulations limiting the maximum length of a cul-de-sac to 600 feet in urban subdivisions, based on the findings of fact set forth in the staff report; and approve the variance request from Article 3-2(8) of the Missoula County Subdivision Regulations requiring pedestrian and/or bicycle circulation and boulevards, based on the findings of fact set forth in the staff report and subject to the recommended condition of approval. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners deny the variance request from Article 3-2(11) of the Missoula County Subdivision Regulations prohibiting dead-end streets, based on the findings of fact set forth in the staff report. Commissioner Carey seconded the motion.

Chairman Evans stated that during Planning Status discussions, the applicant agreed that these would not be dead-end streets and that hammerhead turnarounds would be installed.

Monte Sipe stated the applicant requested a variance to the regulation to not install any type of turnaround. There has been some discussion on agreement to provide such a turnaround, but the way to achieve that is to deny the variance request as presented.



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The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners amend Condition 4 as follows: "Language shall be provided on the face of the final plat and referenced in the covenants requiring all lots fronting on short courts within the subdivision to require a 20 foot front yard setback from the back of the curb, subject to review and approval by OPG prior to final plat approval. Lot 6 front yard is on the east side of the lot." Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners delete Conditions 9 and 10 requiring elimination of Lots 25, 33, 19 and 20. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners amend Condition 11 to read: "The remainder shall be included within the subdivision as a lot." and strike the rest of the language. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners amend Condition 12 to read: "All areas of riparian resource, including those within the area proposed for additional flood storage on the remainder and Lots 19, 20, 25 and 33, shall be mapped and identified prior to placement of fill material or any grading to ensure their preservation. The area of riparian resource map depicting lot and road layout shall be subject to review and approval by the Board of County Commissioners prior to final plat approval and shall be attached to the riparian management plan." Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

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

Commissioner Curtiss moved that the Board of County Commissioners accept the recommendation of the Planning and Zoning Commission to approve the Zoning District 41A variance request to allow lots with a minimum lot size of less than 10,000 square feet, for those lots listed on the preliminary plat of Willowbrook Meadows as Lots 5, 6, 8, 9, 10, 11, 12, 13, 18 and 33, subject to the findings of fact and the recommended conditions contained in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss stated that there should be additional language for flooding.

Chairman Evans stated that there was no recommendation from staff that the County be indemnified. It needs to be on the record that the applicant will indemnify the County in regard to flooding.

Nick Kaufman stated he would need more information.

Colleen Dowdall stated that there is a condition for Cunningham Homes that could be used. It states that the design engineer and the property owner shall agree to indemnify, hold harmless and defend Missoula County, its agents and employees from any loss, cost or claim that may arise out of the County's approval of this subdivision based upon the engineer's certification of the required flood information. The engineer shall provide evidence of coverage by errors and omission insurance prior to final plat approval. This could perhaps wait until the review and approval of the riparian management plan. If the County is going to rely on the engineer's assessment of whether these houses are going to flood or not, then the engineer needs to defend the County.

Nick Kaufman stated there are two opportunities for the Board to discuss this again. One would be when the riparian management plan is presented and one is when the plans are submitted to the Public Works Department. His firm has never done an indemnification before. He needs to take this language back and discuss it with his partners and their insurance company. He asked what the pleasure of the Board was on this issue.

Commissioner Curtiss stated the County did not want to be in the same situation as Mullan Trail.

Commissioner Carey stated that he could not support the project unless that language was included.

Nick Kaufman stated that the Board just approved the subdivision.

Commissioner Carey stated there needs to be some way to rectify that.

Commissioner Curtiss asked if the hearing could be reconvened to add this language.

Colleen Dowdall stated she did not think that could be done.

Nick Kaufman stated that he is not saying no to including the language, but this is the first time he has seen this language. He is asking for time to look at the language and discuss it with his partners and insurance company.

Monte Sipe stated that Condition 12 does not cover the situation nor does it allow the Board of County Commissioners to apply indemnification at the time the Riparian Management Plan is submitted for approval.

Colleen Dowdall stated that approval of the riparian plan could be conditioned on the indemnification.

Nick Kaufman stated that the subdivision was acted upon and the public hearing was closed. If the Board wants to reopen the hearing right now and change what they did, what is the difference whether it is done today or next Wednesday or Friday after he has had a chance to review the indemnification language.

Commissioner Carey stated that he did not want to reopen the hearing right now, but wants to make sure that language is somehow included in the approval of this subdivision.

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Nick Kaufman stated that the implication of such a condition deserves some consultation.

Colleen Dowdall stated that she needs to look at what can legally be done to add the indemnification language. A decision does not need to be made right now. Mr. Kaufman is on notice of the issue and he is correct that it doesn't matter if the hearing is reopened now or later. Deputy County Attorney Marnie McClain should also be consulted as she has defended the County on these matters before.

Nick Kaufman thanked the Board for calling him back regarding this matter and he will take it up with his partners and insurance company. Gilbert Larson said that PCI has indemnified the County on a couple of subdivision and he would like to discuss that with Gilbert.

Colleen Dowdall stated that Eli & Associates and DJ&A have also provided indemnification on a few subdivisions. It was also recommended on the Liberty Cove Subdivision, but that subdivision was denied.

#### **Willowbrook Meadows Subdivision Conditions of Approval:**

##### **Zoning**

1. A variance to the 10,000 square foot minimum lot size requirement must be reviewed and approved by the Planning and Zoning Commission and the Board of County Commissioners prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and OPG recommendation.*

##### **Roads**

2. A turnaround shall be installed at the end of Pitch & Putt Lane and at an appropriate location on Adison Court. The turnaround on Pitch & Putt Lane shall be approved by County Public Works and the turnaround on Adison Lane shall be approved by County Public Works and the Missoula Rural Fire District prior to final plat approval. Easements for the turnaround shall be delineated on the face of the plat, subject to approval by OPG, prior to final plat approval. *Subdivision Regulations Article 3-2(1)(J), 3-2(10), 3-2(11), Public Works and Missoula Rural Fire District recommendation.*
3. 28 foot wide minimum private access and utility easements shall be designated on the face of the plat for each short court, subject to approval by OPG, prior to final plat approval. *Subdivision Regulations Article 3-2(1)(J), 3-2(10), 3-2(11), Public Works and Missoula Rural Fire District recommendation.*
4. Language shall be provided on the face of the final plat and referenced in the covenants requiring all lots fronting on short courts within the subdivision to require a 20 foot front yard setback from the back of the curb, subject to review and approval by OPG prior to final plat approval. Lot 6 front yard is on the east side of the lot. *Subdivision Regulations Article 3-1(1)(I)(vi)(d) and OPG recommendation.*
5. The road maintenance agreement for all private roads shall be reviewed and approved by the County Attorney's Office prior to final plat approval. *Subdivision Regulations Article 3-2.*

##### **Pedestrian Facilities**

6. Pedestrian facilities shall include 5 foot concrete boulevard sidewalks on both sides of Golf Drive, 5 foot concrete curbside sidewalks on both sides of Pitch & Putt Lane and a 5 foot asphalt walkway on the west side of Lakeside Drive where it abuts Lot 1. *Subdivision Regulations Article 3-2(8), Health Department and OPG recommendation.*

##### **Fire**

7. The design and placement of fire hydrants within the subdivision shall be reviewed and approved by the Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-7 and Missoula Rural Fire District recommendation.*

##### **Parks/Common Areas**

8. The areas delineated as "Park" on the face of the preliminary plat shall be modified to "Common Area" and provision for maintenance of the common areas shall be included in the covenants, subject to approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-8 and Park Board recommendation.*

##### **Riparian/Floodplain**

9. The remainder shall be included within the subdivision as a lot. *Subdivision Regulations Article 3-1(2), 3-4, 4-1(12) and Floodplain Administrator recommendation.*
10. All areas of riparian resource, including those within the area proposed for additional flood storage on the remainder and Lots 19, 20, 25 and 33, shall be mapped and identified prior to placement of fill material or any grading to ensure their preservation. The area of riparian resource map depicting lot and road layout shall be subject to review and approval by the Board of County Commissioners prior to final plat approval and shall be attached to the riparian management plan. *Subdivision Regulations Article 3-13.*
11. A Riparian Area Management Plan addressing planned mitigation of impacts from floodplain development, road and infrastructure improvements and restoration of the areas with native species shall be submitted for review and approval by OPG and County Public Works prior to commencement of any construction within the designated Riparian Areas. *Subdivision Regulations Article 3-13.*
12. The developer shall obtain a Conditional Letter of Map Revision to the FEMA designated 100 year floodplain for all lots currently encumbered with this designation. Evidence that all lots have been removed from the FEMA designated 100 year floodplain shall be submitted to OPG prior to final plat approval. *Subdivision Regulations Article 3-1(2), 4-1(12), Floodplain Administrator and OPG recommendation.*

13. The developer shall submit a floodplain development permit application prior to any development or grading and the application shall include a hydraulic study by a registered professional engineer documenting the probable effects on upstream and downstream property owners caused by the proposed development (including placement of fill and excavation). The study shall include documentation as to the effect upon the base flood elevation and any increase in velocities caused by the proposed development. *Subdivision Regulations Article 3-1(2), 3-4, 4-1(12) and Floodplain Administrator recommendation.*
14. Section 5. Building Type, within the covenants shall be amended to state: "Basements are not permitted. The lowest finished floor elevation and any mechanical equipment shall be two feet above the base flood elevation. Crawl space floors may be at flood elevation if they do not contain mechanical equipment." *Subdivision Regulations Article 3-1(2), 3-4, 4-1(12) and Floodplain Administrator recommendation.*
15. Article V, Paragraph 2, shall be amended to state: "All sections in this declaration relating to floodplain, high ground water, riparian areas, no build/no improvement zones, front setbacks, wildlife, fire protection, noxious weed control and revegetation shall not be amended or deleted without governing body approval. *OPG recommendation.*
16. A Revegetation Plan for disturbed sites shall be reviewed and approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed Board recommendation.*

**Hearing: Cunningham Homes (9 lots on 45.22 acres) – Maple Creek area, north of Carlton on Old Highway 93**

Tim Worley, Office of Planning and Grants, presented the staff report.

Lane Cunningham, represented by Gilbert Larson of PCI, is proposing to create Cunningham Homes, a subdivision proposal for 9 residential lots on 45.22 acres in the Carlton area on Old Highway 93 north of Sun Valley Road, approximately 4 miles south of Lolo. Lot sizes range in size from 3.0 acres to 11.66 acres. The proposed density is 1 dwelling per 5.04 acres which complies with the Zoning District 40 density standard of 1 dwelling per five acres and the 2002 Lolo Regional Plan's recommended density of one dwelling unit per five acres.

The parcel has a substantial agricultural history. It has been grazed in the past and some has continued until recently. There are a couple of soils on the property that are considered prime farmland soils if irrigated, but there are no irrigation ditches on the property.

The property fronts along Old Highway 93, a County maintained road. The plat shows a 20 foot wide paved road surface and the right-of-way adjacent to Cunningham Homes varies between 100 feet and 120 feet in width. Old Highway 93 qualifies technically under the Subdivision Regulations as a collector because it serves over 200 dwelling units and is required to meet the collector standard of a 32 foot paved width. As a result, the applicant is requesting a variance from the collector width standard. The request is supported by Erik Dickson of Public Works because additional traffic from this subdivision does not warrant improvements to just this section of Old Highway 93. Staff supports the variance request.

Cunningham Court is the interior cul-de-sac road that provides access to the lots. It is 24 feet in width within a 54 foot easement. Construction of this paved road began in 2003 and it is the developer's intent to have the road accepted for County maintenance. Erick Dickson of Public Works commented that since Cunningham Court has been built without addressing recommendations made regarding the preliminary road plans, the road might not be accepted for County maintenance. As a result, staff recommends a condition requiring the Homeowners Association to enter into a road maintenance agreement to be appended to the covenants if the road is not accepted for County maintenance.

There are no pedestrian facilities adjacent to Old Highway 93. Since pedestrian facilities are required according to Article 3-2(8)(A)(iii) of the regulations, the applicant has requested a variance. Erik Dickson of Public Works supports this request due to the lack of facilities in the area. Staff also supports the variance request. Cunningham Court has a separated, paved 5 foot walkway, construction of which began in 2003, which meets the regulations. The plat also shows a 20 foot wide public pedestrian easement that extends about 324 feet north of the cul-de-sac to provide access to the 6.11 acre common area. Since the common area is in private ownership, staff recommends a condition that the 20 foot wide public pedestrian easement be changed to a private pedestrian easement.

Article 3-2(8)(C) requires non-motorized facilities to provide safe access to common areas or open space and Article 3-8(f) requires open space to be accessible and functional. As a result of this, staff recommends a condition requiring installation of a 5 foot wide Class III low impact trail. Lisa Moisey, County Parks, recommended the need for walkway development.

Each lot will be served by individual wells and septic systems. Solid waste service will be provided to this location by BFI. There is an allowance in the covenants for recessed garbage containers. Since this violates the City-County Health Code, staff recommends changing this language to not allow recessed containers.

The common area is 6.11 acres in size and exceeds the standards required in Section 3-8(3)(E) of the regulations. This has been designated as an "Area of Riparian Resource/No Improvement Zone." Staff would like to see this designation on the plat and has recommended that as a condition.

The 2002 Lolo Regional Plan designates a portion of this property as being within an Area of Significant Flood Risk, which can include areas within the 100 year floodway fringe, the 500 year floodplain or other areas of flood hazard. The Lolo Plan defines flood hazard areas as those that might be inundated by floodwaters, surfacing groundwater or places where alteration of the land could increase flooding danger for other properties. Flood hazard areas also include land that would be inundated by surfacing groundwater either during a 100 year flood, 500 year flood or high groundwater event. Also included is land that is less than two feet above the elevation of the 100 year flood. The Riparian Resource Management Plan indicates there are old Bitterroot River oxbows on the property. Some of these have standing water that rises and falls with the seasonal rise and fall of groundwater. There is also vegetation indicating wetland properties found beyond areas indicated in the common area or other demarcated riparian areas. It is staff's understanding that home

construction will be above and away from the wetter sites of the subdivision, however, there is sufficient evidence that water might be a problem on portions of the property that establishing high groundwater or flood elevations is important to determine actual habitable locations. Staff recommends a condition requiring determination of the 100 year flood level of the Bitterroot River and seasonal high groundwater level in relation to the property.

Condition 7 addresses these concerns. It reads: "The developer shall identify the 100 year flood elevation of the Bitterroot River in relation to the subdivision, referenced to the National Geodetic Vertical Datum of 1929. All areas below the elevation of the Bitterroot River's 100 year flood shall be delineated as "no build areas" on the final plat. Structures shall have a lowest floor elevation of at least two feet above the Bitterroot River's 100 year flood elevation or the seasonal high groundwater peak, whichever is greater. Documentation shall include evidence of whether any land or structures within the subdivision would be inundated by surfacing groundwater either during a 100 year flood, 500 year flood or high groundwater event." Condition 8 is the indemnification language referred to in the discussion of Willowbrook Meadows. Todd Klietz, Floodplain Administrator, will speak as to the crafting of Condition 7. The original submittal had comments made by the acting Floodplain Administrator at the time, Jeff Schalow. Todd then joined the staff and had significant input as to what should be included in Condition 7.

Todd Klietz, Floodplain Administrator, stated there was information on the preliminary plat regarding septic system placement close to the highway which had places indicative of seasonal high groundwater, less than 5 feet from the surface. Sanitarians look at septic systems and groundwater during one particular year, but it is not necessarily the same year that is looked at for flooding potential. The concern was if basements were allowed in those areas where there could be seasonal high groundwater, those basements might be damaged. That is why the condition includes both the 100 year flood elevation and the seasonal high groundwater, whichever is greater.

Tim Worley stated that the subdivision is within the Florence Rural Fire District. Gordon Geiser commented that attention should be paid to house numbering, size and location. Staff recommends a condition placing these provisions in the covenants. Article 3-7(1) requires a water source for fire protection. Mr. Geiser recommended a 10,000 gallon storage tank, plus an auto-refill well and dry hydrant. After further discussions with Mr. Geiser, staff recommends a condition requiring 2,000 gallons of storage, an auto-refill well and a dry hydrant.

There is approximately 50 feet of relief on the property, but there are two main areas that are relatively level. There is a bench occupied by Cunningham Court, primarily in grasses, and there is a lower area that includes the common area and has a tendency to be wetter. Some riparian vegetation exists in this lower, wetter area. Since there is a potential for a variety of wildlife species that could be found here, including coyotes, elk, raccoon and skunks, Mack Long of Fish, Wildlife and Parks recommends that a living with wildlife section be added to the covenants. This is a recommended condition of approval. Mr. Long also included guidelines for the riparian areas and suggests that these be added to the covenants. Staff recommends conditions that the Riparian Resource Management Plan be amended with these guidelines and that the Plan be added to the covenants and that a site map of the Areas of Riparian Resource be attached.

The entire common area has been designated an Area of Riparian Resource. This designation also applies to a band of sedges that cross Lots 7, 8 and 9. Staff recommends a condition requiring that these designations be on the plat. Bill Otten commented on the subdivision and said there has been significant grazing that has introduced non-native grasses and weeds. Based on his recommendation, staff recommends a condition requiring a revegetation plan and that the plan be attached to the covenants.

There is one easement issue that needs to be addressed. There is an overhead utility (Qwest) line that crosses portions of Lots 1, 2, 7, 8 and the common area. David Smith, a Qwest engineer, recommends that there be an easement for this overhead line, which staff has recommended as a condition.

Conditions 9 and 11 relate to the covenants. Condition 9 refers to a notice of mitigation for radon and Condition 11 states that certain portions of the covenants may not be revised or removed without approval of the governing body.

Cunningham Homes was heard before the Planning Board on December 16, 2003. Planning Board recommended approval of the variances and subdivision based on staff's recommended conditions, with a revision to Condition 1 and four new conditions. Condition 1 was revised to read: "Cunningham Court shall be constructed to County road standards acceptable for County maintenance."

Commissioner Curtiss asked Tim what the Planning Board's reasoning was behind this revision.

Tim Worley stated that the Planning Board was interested in maintaining a connection for possible future conditional access easements. There was a desire to have Cunningham Court be public so there wouldn't be a private road that would possibly cause problems with future conditional public access. The developer has proposed Cunningham Court to be a public road. The second condition recommended by Planning Board is shown as Condition 16. This is simply a change of the RSID waiver statement to make it specific to Old Highway 93. Recommended Conditions 17 and 18 from Planning Board regard the issue of a couple of different conditional public access easements. Condition 17 refers to a 30 foot conditional access easement across the northern boundary of the subdivision, in addition to the 20 foot private access easement that already exists. This essentially provides access to the two properties to the north that are not part of the subdivision. This easement is conditioned on rights-of-way being used as roadway to serve parcels to the north. Language is included in the condition that says that a split would have to happen on the property to the north for this easement to come into being and that lot owners of Cunningham Homes would not be responsible for paying construction costs if construction is attributable to splits to the north. Condition 18 involves a conditional access easement that would go north from the end of the cul-de-sac. It is a 50 foot conditional access easement that would have the boundary line between Lots 6 and 7 as the centerline. It would continue north as a 30 foot conditional access easement to the northwestern portion of the property along the western end of the common area. The ultimate connection would be a loop road back to Old Highway 93. There is language in the condition that states that lot owners and the Homeowners Association won't be responsible for paying construction costs if construction is attributable to splits on property to the west. The final additional condition from Planning Board is for a pedestrian easement 15 feet wide along the eastern edge of Lot 1, however, there is nothing existing that would connect to. Planning Board and staff recommend approval of Cunningham Homes.

Gilbert Larson, PCI, developer's representative, stated that there is consensus with regard to the variances and approval of the subdivision. They are in full concurrence with the conditions of approval as recommended by staff. He would like to discuss the recommendations from Planning Board and distributed a memo regarding those recommendations. He was unaware that there was confusion on the road issue. Cunningham Court should have been shown as dedicated public right-of-way and public access. They are in full agreement with Condition 1 from staff. Even if it is dedicated public right-of-way, the maintenance of the street has to be determined. They need to work with Public Works before the road will be accepted for County maintenance. The condition from staff states that it will be public access. If the road is not accepted by the County, the maintenance would fall back on the homeowners. It is the developer's intent to bring the road into full compliance with County standards. Acceptance of Condition 1 as originally written by staff is requested. The Planning Board's amendment seems to confuse the issue of private or public roads. The condition was originally written to address the maintenance of the road. It is the developer's intent to make this a public road, regardless of maintenance. Condition 16 dealt with the RSID language. It was already included on the plat a standard statement for RSID waivers for streets within the subdivision. The Planning Board added an RSID waiver for Old U.S. Highway 93. Frankly, the developer doesn't care. If the Board of County Commissioners wants to include Condition 16, it really doesn't affect their plans. He questioned whether an RSID could ever be created for a old highway that crosses County lines and the benefits would be next to impossible to determine. He would recommended deleting Condition 16 but the developer does not have objections either way. They do have objections to Condition 17 for a 30 foot easement on the north. It was his understanding that it would not be in addition to the 20 foot private easement, but would take its place and become a 30 foot public easement. It does not make sense to have the two easements parallel to each other. Objections include the fact that this is a riparian area, the area is already fully developed, the surrounding lots are already at the one dwelling unit per five acres density recommendation, there is not potential for future development and they don't understand the reason for the link. It is requested that Condition 17 be deleted, or at a minimum, clarify the language. Of even more importance is Condition 18 and they request that it be deleted. It requires a 50 foot wide easement off the cul-de-sac bulb extending between Lots 6 and 7. It restricts the buildable areas of these lots and is a burden to those future lot owners. It encourages a future link that would be built through a riparian area. It also could give someone the idea that a future road could be built and future development could occur in an area that is already fully developed. It would be in conflict with the Comprehensive Plan and zoning. Condition 19 deals with the walkway easement along Lot 1. It really doesn't affect the development much, it would just deal with setback. There is already a 100 foot right-of-way there with a 20 foot road. That leaves 80 feet of right-of-way, more than enough room to construct a pedestrian walkway if one should be desired sometime in the future. He did not see a need to add 15 feet to just one lot along this whole stretch of Old Highway 93. It wouldn't be that much of a burden to the future owner of Lot 1, but it seems unnecessary. It is requested that Condition 19 be deleted. It would be their recommendation to approve the subdivision with the conditions as presented by staff.

Chairman Evans opened the public hearing.

Elmer Palmer, Lolo Community Council, stated that a council member talked to all of the neighbors in the area of this development and everyone was in favor of it. The Lolo Community Council would like to relay the feelings of those neighbors who are in full approval of the proposed development.

Commissioner Curtiss stated that the proposal for Cunningham Court was confusing. If the original language from staff is used for Condition 1, would it require any clarification.

Colleen Dowdall stated that the original proposed condition covers the situation. She felt that Planning Board's revision requires the County to accept it for maintenance if it is built to County road standards.

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

Greg Robertson stated that he has read the Planning Board minutes and looked at this piece of property. He would concur with Gilbert Larson that Conditions 17, 18 and 19 should be deleted. This is a rural area mostly developed out in keeping with that rural character. He concluded that the Planning Board was trying to develop some sort of road grid for connectivity. The reality is there is no need for such connectivity. He would like to keep Condition 16 as it is appropriate. Eventually, Old Highway 93 will need significant improvements. All of the other subdivisions that have been approved in the last several years have had RSID waiver language for Old Highway 93.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Article 3-2(3)(B) of the Missoula County Subdivision Regulations requiring a rural collector street width of 32 feet for Old Highway 93, based on the findings of fact in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Article 3-2(8)(A)(iii) of the Missoula County Subdivision Regulations requiring installation of pedestrian and/or bicycle circulation along Old Highway 93, based on the findings of fact in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners reject Planning Board's revision to Condition 1 and accept Condition 1 as originally presented by staff. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners accept Planning Board's recommendation for Condition 16 and reject Planning Board's recommendation for Conditions 17, 18 and 19. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

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

**Cunningham Homes Subdivision Conditions of Approval:**

004 PM 0251

**Roads**

1. If Cunningham Court is not accepted for County maintenance, the Homeowners Association shall enter into a road maintenance agreement to be appended to the covenants, subject to review and approval by OPG and the County Attorney's Office, prior to final plat approval. *Subdivision Regulations Article 3-2(1)(H) and OPG recommendation.*

**Non-Motorized Facilities**

2. The 20 foot public pedestrian access easement shall be changed to a private pedestrian access easement. The subdivider shall install a 5 foot wide Class III low impact trail within the private pedestrian easement, subject to review and approval by OPG, prior to final plat approval. *Subdivision Regulations Article 3-2(8)(C), 3-2(8)(J), OPG, County Surveyor's Office and County Parks recommendation.*

**Easements**

3. An easement shall be shown on the plat for the overhead utility line that crosses Lots 1, 2, 7, 8 and the common area, to be reviewed and approved by Qwest, prior to final plat approval. *Subdivision Regulations Article 3-6 and Qwest recommendation.*

**Fire**

4. The covenants shall be amended to include house numbering plans, including size and location, subject to review and approval by the Florence Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-2(2)(G) and Florence Rural Fire District recommendation.*
5. An auto-refill well and a 2,000 gallon storage tank/cistern with a fire hydrant attached for water supply for fire protection purposes shall be installed prior to final plat approval. The proposed covenants shall be amended to include the requirement that the approved water supply for fire protection is the property of the Homeowners Association and that the Association will be responsible for all costs associated with the maintenance, repair and upkeep of the approved system for fire protection purposes. Covenant amendment language shall be reviewed and approved by OPG and the Florence Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-7(1) and Florence Rural Fire District recommendation.*

**Weeds**

6. A Revegetation Plan shall be reviewed and approved by the Missoula County Weed District prior to final plat approval and this plan shall be included as an attachment to the protective covenants. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*

**Floodplain**

7. The developer shall identify the 100 year flood elevation of the Bitterroot River in relation to the subdivision, referenced to the National Geodetic Vertical Datum of 1929. All areas below the elevation of the Bitterroot River's 100 year flood shall be delineated as "no build areas" on the final plat. Structures shall have a lowest floor elevation of at least two feet above the Bitterroot River's 100 year flood elevation or the seasonal high groundwater peak, whichever is greater. Documentation shall include evidence of whether any land or structures within the subdivision would be inundated by surfacing groundwater either during a 100 year flood, 500 year flood or high groundwater event. *Subdivision Regulations Article 3-1(1)(B), 4-1(12), Floodplain Administrator and OPG recommendation.*
8. The design engineer and the property owner shall agree to indemnify, hold harmless and defend Missoula County, its agents and employees from any loss, cost or claim that may arise out of the County's approval of this subdivision based upon the engineer's certification of the required flood information. The engineer shall provide evidence of coverage by errors and omissions insurance prior to final plat approval. This condition shall be addressed in a development agreement in the covenants to be reviewed and approved by the County Attorney's Office prior to final plat approval. *Subdivision Regulations Article 3-1(2), Floodplain Administrator and OPG recommendation.*

**Covenants**

9. The covenants shall be amended to include a provision advising property owners of the Health Department recommendation that all new construction incorporate passive radon mitigation systems. The language of the provision shall be subject to review and approval by OPG prior to final plat approval. *City-County Health Department recommendation.*
10. Article VII, Section 15 of the protective covenants shall be changed to state that residential garbage containers shall not be recessed into the ground, subject to review and approval by the City-County Health Department, prior to final plat approval. *Missoula City-County Health Code Regulation 3, Section IV(4)(e) and City-County Health Department recommendation.*
11. Article IX, Section 4 of the protective covenants shall be revised to state that sections regarding fire protection, solid fuel-burning appliances, weeds, radon, addressing, Riparian Resource Management Plan and garbage shall not be amended or deleted without governing body approval. *Missoula County Weed District and OPG recommendation.*
12. The protective covenants shall be amended to provide for the following:

Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, elk, bears, mountain lions, skunks and raccoons. Contact the Montana Fish, Wildlife and Parks Office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife."

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as to help homeowners protect themselves, their property and the wildlife that Montanans value.

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1. There is a **potential for vegetation damage by wildlife**, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be aware of this potential damage. They should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Homeowners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
2. **Do not feed wildlife** or offer supplements (such as salt blocks), attractants or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against State law (MCA 87-3-130) to provide supplemental feed attractants if it results in a "concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners should be aware that deer might occasionally attract mountain lions.
3. **Pets** must be confined to the house, in a fenced yard or in an outdoor kennel area and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current State law, it is illegal for dogs to chase hooved game animals.
4. **Garbage** should be stored in secure animal resistant containers or indoors to avoid attracting animals such as bears, raccoons, dogs, etc. Garbage containers shall not be placed outdoors until the actual day of trash pickup.
5. **Pet food** (and livestock feed) should be stored indoors or in animal-resistant containers in order to avoid attracting wildlife such as bears, skunks, raccoons, etc.
6. When **feeding pets or livestock**, do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
7. **Barbecue grills** should be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on the grill, lid, etc., can attract bears and other wildlife.
8. Consider **boundary fencing** that is no higher than 3.5 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence.
9. **Gardens** can attract wildlife. Keep the produce picked because rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
10. **Fruit trees or orchards** can attract wildlife such as deer and bears. Keep ripe fruit picked and do not allow rotten fruit to collect under trees. Consider fencing to keep deer out.
11. **Bird feeders** attract bears. Consider not using them in this area between the months of April through October. *Fish, Wildlife and Park and OPG recommendation.*

#### Areas of Riparian Resources

13. A site map of the Areas of Riparian Resource shall be attached to the Riparian Resource Management Plan and the Riparian Resource Management Plan shall be incorporated into the covenants, subject to review and approval by OPG, prior to final plat approval. *Subdivision Regulations Article 5-3(5)(F), Fish, Wildlife and Parks and OPG recommendation.*
14. The Riparian Resource Management Plan shall be amended to include the following language:  
  
Health, naturally functioning riparian areas benefit wildlife, as well as recreation. The following guidelines are designed to help avoid damage to riparian areas and/or seasonal water events (usually springtime).
  1. Only non-motorized access and use of the areas is allowed except for certain maintenance needs such as weed spraying and except for the existing private driveway easement along the north and west boundaries of the common area.
  2. Do not cut or remove live or dead vegetation, particularly shrubs and trees. (Exception: proper use of chemicals or other methods of control for noxious weeds or work necessary for fire protection).
  3. Leave native vegetation as ground cover as this avoids the use of fertilizers that contribute to water quality problems.
  4. If planting is planned for these areas, the goal should be to re-establish native plant species appropriate to the site.
  5. In summary, leave riparian areas alone. Do not modify them unless such change would help return the areas to a natural state. *Fish, Wildlife and Parks recommendation.*
15. The "Area of Riparian Resource – No Improvement Zone" on Lots 7, 8 and 9 shall be shown on the final plat. The common area shall be designated as an "Area of Riparian Resource – No Improvement Zone" on the final plat. *Subdivision Regulations Article 3-13(2) and OPG recommendation.*



16. The waiver of the right to protest note on the plat shall be revised to state the following:

"Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future RSID/SID, based on benefit, for upgrading Old Highway 93 and Cunningham Court, including, but not limited to, paving, curbs and gutters, non-motorized facilities, street widening and drainage facilities." *Planning Board recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 5:20 p.m.

**THURSDAY, JANUARY 8, 2004**

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

Claims List – The Commissioners signed the Claims List, dated December 31, 2003, with a grand total of \$11,492.36. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated January 6, 2004, with the following grand totals:

- 1) \$8,920.03; and
- 2) \$47,358.32.

The Claims Lists were returned to the Accounting Department.

Plat and Agreement – The Commissioners signed the Plat and Subdivision Improvements Agreement and Guarantee for Phantom Hills, Phases 1 & 2, a subdivision located in the W½ and the SE¼ of Section 10, T 13 N, R 20 W, PMM, Missoula County, a total area of 36.28 acres, with the owners of record being Charles M. and Nancy A. Deschamps. The Improvements Agreement is for water supply wells, storage, booster pump, streets, sewer, water, clubhouse parking lot, Mullan Road improvements, and landscaping; said improvements shall be completed no later than May 31, 2004. The estimated costs are \$3,314,810.00, and have been secured by an Improvements Bond issued by Federal Insurance Company.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Mary A. Armour, Tempe, Arizona, as Principal for Clerk of District Court Warrant #917551, issued November 19, 2003 on the Missoula County District Court Trust Fund in the amount of \$450.00 (for maintenance), which cannot be found.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Shirley E. Faust, for the month ending December 31, 2003.

**ADMINISTRATIVE MEETING**

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

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-015 for the Health Department, reflecting \$50.00 for a needed object code.

Resolution No. 2004-002 – The Commissioners signed Resolution No. 2004-002, dated January 8, 2004, a Resolution to alter "Lower Miller Creek Road, located in Section 11, T 12 N, R 20 W, Missoula County, Montana, conditional on construction of the road to Missoula County standards by the developer and accepted by Missoula County Public Works" because the roadway is going to be improved (as shown in the Maloney Ranch Phase VIII subdivision, and as shown on Exhibit "A" attached).

Resolution No. 2004-003 – The Commissioners signed Resolution No. 2004-003, dated January 8, 2004, a Resolution to rename "DeSmet Road, located in Section 26, T 14 N, R 20 W, Missoula County, Montana to Interstate Place," because Interstate Place was a reserved name for use in the Butler Creek Development Park.

Resolution No. 2004-004 – The Commissioners signed Resolution No. 2004-004, dated January 8, 2004, a Resolution to abandon "DeSmet Road from the intersection of DeSmet Road at the Section Corner of 26,27,34, and 35 for approximately 485 feet to the east as shown in County Road Book 1 located in the SW¼ of Section 26, T 14 N, R 20 W, Missoula County, Montana, for the following reasons: 1) to make travel between Expressway and DeSmet Road easier and safer; 2) to alleviate intersection confliction at Expressway and DeSmet Road; and 3) the right-of-way has no value to Missoula County.

Resolution No. 2004-005 – The Commissioners signed Resolution No. 2004-005, dated January 8, 2004, a Resolution to abandon "an unnamed road in Road Book 1 located in Golden West Addition No. 1, Lot 16, in the SW¼ of Section 14, T 13 N, R 20 W, Missoula County, Montana, for the following reasons: 1) it does not physically exist; 2) the location is impractical; the intersection with Mullan Road is in a dangerous location; and 3) it interferes with the proposed subdivision of Lot 16.

Resolution No. 2004-006 – The Commissioners signed Resolution No. 2004-006, dated January 8, 2004, a Resolution to alter "Bitterroot Road, Bitterroot High Water Road, and Missoula County Road Plat Book 1 Road, located in Section 11 and 14, T 12 N, R 20 W, Missoula County, Montana, for the following reasons: 1) these three roads are not locatable on the ground; and 2) relocating these roads moves them to an existing roadway easement.

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

**FRIDAY, JANUARY 9, 2004**

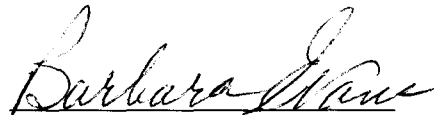
The Board of County Commissioners met in regular session; all three members were present.

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Claims List – The Commissioners signed the Claims List, dated January 7, 2004, with a grand total of \$12,096.07. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated January 9, 2004, with a grand total of \$5,141.35. The Claims List was returned to the Accounting Department.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, JANUARY 12, 2004**

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Evans attended a Conservation Awards meeting held at Bruce Bugbee's residence.

Claims List – The Commissioners signed the Claims List, dated January 7, 2004, with a grand total of \$83.33. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated January 8, 2004, with the following grand totals:

- 1) \$2,341.23; and
- 2) \$3,312.59.

The Claims Lists were returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated January 9, 2004, with a grand total of \$44,850.11. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated January 12, 2004, with a grand total of \$33,974.08. The Claims List was returned to the Accounting Department.

Plat and Agreement – The Commissioners signed the Plat and Subdivision Improvements Agreement and Guarantee for Stillwaters on the Clark Fork No. 1, a subdivision located in the S½ of Section 9, T 13 N, R 20 W, PMM, Missoula County, a total area of 16.46 acres, with the owner of record being Yellow Stone Fly, LLC. The Improvements Agreement is for drainage, ponds, trails, pathways, roadway base, asphalt surfacing, contingency, engineering, testing, and other related items; said improvements shall be completed within two years of filing the Plat of Stillwaters on the Clark Fork No. 1. The estimated costs are \$252,441.88, and have been secured by a Letter of Credit from Bitterroot Valley Bank.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 01 – CY2004 - Pay Date: January 9, 2004. Total Missoula County Payroll: \$920,759.51. The Transmittal Sheet was returned to the Auditor's Office.

Letter – The Commissioners signed a letter to Mike Thompson, Montana Fish, Wildlife and Parks, Missoula, dated January 14, 2004, supporting a conservation easement on DNRC land in the Blackfoot-Clearwater Wildlife Management Area, which will provide for the long-term protection of its critical habitat values. This easement would not affect tax revenues to the County and that traditional uses of the land will continue, including forest management and public access.

**TUESDAY, JANUARY 13, 2004**

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.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming A-1 Distributors, Missoula, as Principal for Frenchtown School District #40 Warrant #39406, issued November 8, 2003 in the amount of \$762.73 (for Invoice #1220820), which cannot be found..

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Danny and Sally Rogers, Bonita, CA as applicant for Accounting Warrant #17721, issued January 29, 2003 on the Missoula County 7920 Fund in the amount of \$13.11 (for deleted 2002 Real Estate Taxes), which was not received in the mail. No bond of indemnity is required.

**ADMINISTRATIVE MEETING**

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

Agreement – The Commissioners signed an Agreement between Missoula County and the American Federation of State, County & Municipal Employees ("AFSCME"), Detention Support Unit, for the establishment of an equitable and peaceful procedure for the resolution of differences, and the establishment of rates of pay, hours of work, fringe benefits and other conditions of employment. This Agreement affects LPNs, maintenance and kitchen employees of the Detention Facility. The term will be July 1, 2003 through June 30, 2004. All other terms and conditions are set forth therein. The document was returned to Steve Johnson in Human Resources for further signatures and handling.

Agreement – The Commissioners signed an Agreement, dated January 13, 2004, between Missoula County and the State of Montana resolving the American Civil Liberties Union lawsuit (Lewis and Clark County, Cause No. CDV-

2002-133) on behalf of Larry White and various other named plaintiffs against Governor Judy Martz and various other defendants, including Missoula County. The State of Montana will defend Missoula County in concert with its own defense and will indemnify and hold Missoula County harmless from any claimed damages from an adverse verdict against the County. This Agreement enables Missoula County to continue its Public Defender services without fear of significant damages should the County suffer an adverse verdict. All other terms and conditions are set forth therein. The document was returned to Mike Sehestedt, Deputy County Attorney, for further signatures and handling.

Contract – Chairman Evans signed Contract (#04-07-3-01-022-0) between Missoula County and the Montana Department of Public Health and Human Services (“DPHHS”), Missoula County and the Montana Obesity Prevention Program, for continued funding in the amount of \$75,000.00 for the community-based obesity prevention and education program. The DPHHS will increase the number of organizations and individuals involved in Obesity Prevention, develop media programs to educate the public, promote the adoption of school-based policies regarding nutrition, physical activity, and develop school and community interventions targeting youth. The term will be July 1, 2003 through June 30, 2004. All other terms and conditions are set forth therein. The document was returned to the Health Department for further signatures and handling.

Resolution No. 2004-007– Chairman Evans signed Resolution No. 2004-007, dated January 13, 2004, a Resolution relating to Rural Special Improvement District (“RSID”) No. 8479 (El Mar Estates Sewer Interceptor); declaring it to be the intention of the Board of County Commissioners to create the District for the purpose of undertaking certain local improvements and financing the costs thereof and incidental thereto through the Issuance of RSID Bonds secured by the County’s RSID Revolving Fund.. The improvements consist of designing, constructing and installing improvements to the existing El Mar community sewer system to enable it to be served by the Municipal Sewer System Treatment Facility. The total estimated costs of the improvements are \$650,125. Funding for said improvements is set forth therein. The document was returned to Jesse Sattley, RSID Coordinator, for further handling.

Resolution No. 2004-008– Chairman Evans signed Resolution No. 2004-008, dated January 13, 2004, a Resolution relating to Rural Special Improvement District (“RSID”) No. 8480 (Golden West Sewer Interceptor); declaring it to be the intention of the Board of County Commissioners to create the District for the purpose of undertaking certain local improvements and financing the costs thereof and incidental thereto through the Issuance of RSID Bonds secured by the County’s RSID Revolving Fund. The improvements consist of designing, constructing and installing improvements to the existing Golden West sewer system to enable it to be served by the Municipal Sewer System Treatment Facility. The total estimated costs of the improvements are \$67,675. Funding for said improvements is set forth therein. The document was returned to Jesse Sattley, RSID Coordinator, for further handling.

Other items included:

- 1) The Commissioners voted to approve a draft proposal submitted by MCDC regarding the Certified Regional Development Corporation.
- 2) After an historical review of past studies on space needs, the Commissioners voted to approve a draft which sets forth the guidelines for a proposed Public Safety Building. CAO Ann Mary Dussault, Sheriff Mike McMeekin and Jane Ellis, Director of Emergency Services, will meet with the City of Missoula regarding the draft proposal.

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

#### WEDNESDAY, JANUARY 14, 2004

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Curtiss and Jim Carlson of the Health Department attended a public meeting held in Seeley Lake with Representatives of DEQ and Pyramid Mountain Lumber regarding the CECRA (Comprehensive Environmental Cleanup and Responsibility Act).

Claims List – The Commissioners signed the Claims List, dated January 12, 2004, with a grand total of \$10,276.47. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated January 14, 2004, with the following grand totals:

- 1) \$100.00; and
- 2) \$758.00.

The Claims Lists were returned to the Accounting Department.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Michael McMeekin, for the month ending December 31, 2003.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

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

Grant Documents – Chairman Evans signed VOCA grant continuation documents (submittal letter, special assurance and conditions, and signature page) for the Crime Victim Advocate Program proposal for FY '05. Missoula County has had this grant since 1985. The documents were returned to Leslie McClintock in the Office of Planning and Grants for further handling.

Letter – The Commissioners reviewed and signed a letter, dated December 16, 2003 to Dick Ainsworth, Professional Consultants Inc., approving his request for an amendment of the Kelly Island Estates Subdivision to allow the right-of-way for Kelly Island Court to be modified to exclude that portion from the dedication that is encroached upon by the

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fire protection water supply system. The developer provided a water supply system for fire protection, but inadvertently installed a portion of the system in the Missoula County right-of-way of Kelly Island Court.

Board Appointments – The Commissioners approved and signed three (3) letters, dated January 15, 2004, reflecting the following appointments to the Missoula County Airport Authority: 1) Louie B. Knudsen – “honorary” member; 2) Janet Stevens – “regular” member for a five-year term (to run through December 31, 2008); and 3) Joe Easton – “2<sup>nd</sup> alternate” member.

Agreement – Chairman Evans signed a Memorandum of Agreement, dated November 26, 2003, between the Missoula County Park Board (the “Board”) and Tyler Park in Lolo for assistance with park development. The Board agrees to provide up to \$3,000 in matching funds from the Capital Matching Fund Program (Fall FY04), and must be spent by November 25, 2005. The document was returned to Lisa Moisey, County Parks Coordinator, for further signature and handling.

Other items included:

- 1) Commissioner Carey offered to read the proclamation at the *Memorial for the Homeless* to be held on January 29, 2004 at 4:30 p.m. on the Courthouse Steps.

Tax Abatement Requests – At the Clerk & Recorder’s Departmental Meeting with Vickie Zeier, held on January 14, 2004 the Commissioners approved requests and/or letters regarding the following:

- 1) To approve a request from Jeff & Tawnee Hibbert to refund taxes and fees paid on Title #G051319;
- 2) To approve a request from Korey Rugg to refund taxes and fees paid on Title #G039353;
- 3) To deny a request from Lincoln & Tracey Hoiland to refund taxes and fees paid on Title #279488;
- 4) To approve a request from Ian Grob to refund penalty and interest for real estate tax ID #1612154;
- 5) To approve a request from Jim Critchlow to refund taxes and fees paid on Title #W845084;
- 6) To deny a request from Zoe Wood to waive penalty and interest for 1<sup>st</sup> half 2003 for real estate tax ID #3460102;
- 7) To approve a request from Paul O’Connell to refund penalty and interest for real estate tax ID #238801;
- 8) To deny a request from Charles Likes, Yuba, California, to waive penalty and interest for 1<sup>st</sup> half 2002 for real estate tax ID #5865431; and
- 9) To approve a request from Rose Marie Mazzolini to refund penalty and interest for mobile home tax ID #90120500.

Tax Abatements – Also at the Clerk & Recorder’s Departmental Meeting with Vickie Zeier, held on January 14, 2004 the Commissioners approved and signed thirteen (13) Applications for Personal Property Tax Refund received from Salmon River Wood Inc. (for a delimber and various business equipment).

#### **PUBLIC MEETING – January 14, 2004**

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

#### **Pledge of Allegiance**

#### **Public Comment**

None

#### **Routine Administrative Actions**

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$179,945.94. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

#### **Hearing (Certificate of Survey): Babbitt Family Transfer (continued from 12/17/03)**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as a tract of land located within the northeast one-quarter of Section 18, Township 13 North, Range 16 West, P.M.M., Missoula County, Montana, being more particularly described as Tract 26 of Certificate of Survey 170.

Tanya M. Babbitt has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 20 acres in size located near Potomac, Montana. Tanya M. Babbitt proposes to create one approximately five acre parcel for transfer to her husband, Mike Babbitt, for residential purposes. She intends to keep the remaining 15 acre parcel for residential purposes as well.

The history of the parcel is as follows: COS 170 was filed in 1974 creating 26 lots, each greater than 10 acres in size. Carl and Elizabeth Stine purchased the parcel November 15, 1974. Lot 26 was then quit claimed to Carl Edward Stine July 27, 1978 by his wife. Darlyne Maloof purchased the parcel August, 1978, and it was deeded to Nita Adamson in November, 1979. The current owner, Tanya M. Babbitt, purchased the parcel from Nita Adamson in November, 2003.

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

Chairman Evans stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. She asked Ms. Babbitt if she was going to transfer this land to her husband.

Tanya Babbitt stated that this was being done so her husband could build a house for his mother and then when something happens to his mother, the house will be for their children.

Commissioner Curtiss asked if there was an existing home on the property.

Tanya Babbitt stated there was not an existing home. They are planning to build a home there in about 10 years when their children are in high school. Mr. Bobbitt's mother is currently paying rent and her place is not very nice, so he would like to build her a small house on the property.

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

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

#### **Hearing (Certificate of Survey): Peterson Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as COS 3110, located in the south one-half of the southeast one-quarter TRA of Section 6, Township 20 North, Range 16 West.

Vernon F. Peterson has submitted a request to divide a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 40.11 acres in size located near Condon, Montana. Mr. Peterson proposes to create one approximately 20 acre parcel for transfer to his daughter, Donna M. Krebsbach and an approximately 20.11 acre parcel to his daughter, Brenda S. Shoemaker.

The history of the parcel is as follows: COS 3110 was filed in 1984 by Irene Peterson, creating a 40 acre parcel. It was exempt from subdivision review because it was greater than 20 acres in size. Irene Peterson transferred this parcel to her husband, Vernon Peterson, retaining sole ownership of the remaining 102.67 acres. It is the 40 acres that Vernon Peterson is requesting to divide.

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

Chairman Evans opened the public hearing.

Vernon Peterson was present and came forward to answer any questions the Board might have.

Commissioner Carey stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. He asked Mr. Peterson if he was going to transfer this land to his daughters.

Vernon Peterson stated this is family distribution of his property. Both of the girls want to retire on the property. One daughter will be taking his house and the other is building a house. They should be moving into the homes in about 4 or 5 years.

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

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

#### **Hearing (Certificate of Survey): Sparks 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 55A of COS 4865, located in Section 17, Township 14 North, Range 20 West.

Glen Sparks has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 11.06 acres in size located near Frenchtown, Montana. Glen proposes to create one approximately 5 acre parcel for transfer to his mother, Bob-be Sparks, for residential purposes and keep the remaining approximately six acre parcel for residential purposes as well.

The history of the parcel is as follows:

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Parcel History	Year	Exemption Used	Owner	Transferee
COS 1925	1979	20 acres or greater	Geneva Cates	
COS 4965 – 4 Parcels: 55A and 55B, 57A and 57B	1998	Family Transfer to four children	Adam and Helen Holzer	Daryl Holzer
In May, 2002, all four parcels were transferred to Daryl Holzer. In July, 2003, Daryl Holzer transferred this parcel to Glen Sparks and two other parcels to other transferees. The fourth parcel was transferred in October, 2003.				

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

Glen Sparks was present and came forward to answer any questions the Board may have.

Commissioner Carey stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. He asked Mr. Sparks if he was going to transfer this land to his mother and what the plans were for the land.

Glen Sparks stated he is currently building a home on one parcel and wants to give the other parcel to his mother. She has talked about building a house. His mother put him through school and this seemed like a good way to pay her back.

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

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

#### **Hearing (Certificate of Survey): McDaniel 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 1A of COS 3881, located in the southeast one-quarter of Section 8, Township 13 North, Range 17 West, Principal Meridian Montana, Missoula County, Montana.

Neil McDaniel has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately two acres in size located near Bonner, Montana. Neil McDaniel proposes to create one approximately 1 acre parcel for transfer to his wife, Wendy McDaniel, for residential purposes and keep the remaining approximately 1 acre parcel for residential purposes as well.

The history of the parcel is as follows: John J. Huffman and Valborg M. Huffman, his wife, purchased this land from Anna C. Kelley, September 17, 1962 (Warranty Deed, Book 226, Page 33). COS 3454 was filed May, 1987 for a Boundary Relocation. COS 3881 was filed by Mr. Huffman in December, 1990 for another Boundary Relocation. Mr. Huffman died on February 7, 1999. A Deed of Conveyance was filed January 1, 2000 deeding the property to Carla A. Zawlocki. Ms. Zawlocki deeded the property to Neil McDaniel and Wendy McDaniel September 11, 2003. Wendy McDaniel quit claimed this property to her husband Neil McDaniel on November 12, 2003.

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

Neil McDaniel was present and came forward to answer any questions the Board may have.

Commissioner Curtiss stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. She asked Mr. McDaniel if he was going to transfer this land to his wife.

Neil McDaniel stated that he has two young daughters. He works in the construction industry and there is enough land to build two houses and is close to other land that he and his wife own. He would like his daughters to each have a house and stay in Missoula. By the time his children are old enough to buy a house, it would probably be too expensive in this area. He is trying to plan ahead for them.

Commissioner Curtiss asked why if Mr. McDaniel had looked at the possibility of transferring the land to his children to be held in a trust.

Neil McDaniel stated he did not think it was a good idea to have the land tied up in a trust. He would not be building on the property until some time in the future.

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

Colleen Dowdall stated that there was a Deed of Trust listed in the public record on this parcel. Is there currently a house on the property.

Neil McDaniel stated there is a house on the property that he is remodeling.

Colleen Dowdall stated that he would be building one additional house.

Neil McDaniel stated that was correct, eventually, but not in the near future. Once the remodel is finished, he will rent the existing house. His own house is up the road about four miles. He is not planning to sell either piece of property.

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

Chairman Evans stated that the family transfer applicants would receive a letter of approval within a week or two. All necessary permits and other requirements will need to be obtained to build on the land. The approval today is only for the division of land; it does not guarantee access or services, nor does it grant Health Department, zoning or planning approval.

**Consideration: Foley Subdivision for Lease or Rent – Bible Lane in Alberton**

Tim Worley, Office of Planning and Grants, presented the staff report.

William and Shannon Foley are requesting approval of a subdivision for lease or rent. The 35 day review deadline for this application was Monday, January 12, 2004. Because a variance request was required and that fact was not discovered until late in the process, staff was required to ask the Foleys for an extension so the request could be heard at today's Public Meeting. The Foleys granted that extension. The request is to place an additional dwelling on a 20.35 acre parcel, approximately one-half mile west of Petty Creek, near Alberton. Most of the property is steep, wooded hillsides but the portion near Bible Lane is relatively flat with an existing home and garage.

The property is unzoned. The Comprehensive Plan in this area recommends one dwelling unit per 40 acre density. This location is within the Alberton Activity Circle. The density recommendation within the Activity Circle is two dwelling units per acre. The density following this development would be approximately one dwelling unit per 10 acres.

This property has no currently agricultural use although there are horses raised on the property. There are no irrigation ditches.

Bible Lane provides access, which is a 25 foot wide gravel road within a 30 foot County right-of-way. There is a 200 foot railroad right-of-way and Bible Lane is contained within a 30 foot County right-of-way that was sold by the railroad back in the 1970's. A variance is required because Article 3-2(3)(B) of the Missoula County Subdivision Regulations requires a 60 foot right-of-way for a County road in this location. Eric Dickson, Public Works, and staff support the variance request. Bible Lane is an off-site road and the nearest paved County road is in excess of 500 feet from this location so there is no paving requirement for Bible Lane. Staff does recommend a condition requiring the applicants to file a document of record waiving the right to protest a future RSID/SID for improvements to Bible Lane. There is no pedestrian access proposed with this development. The RSID/SID waiver does include language regarding pedestrian facilities.

This location is within the Frenchtown Rural Fire District. The nearest fire station is about 2 miles from the property. Technically, this property is within the Wildland/Rural Interface (WRI), so Frenchtown Rural Fire is recommending fuel reduction be done on the property. Staff recommends a condition requiring the applicant to obtain a fire safety permit. The location planned for the structure is in a fairly open, grassy area and any timbered hillside is a significant distance away from the structure.

The proposed development will be located on a high terrace above the Clark Fork River, mainly in grassy cover with some large trees. As a result of the potential for disturbance, Bill Otten recommends a Revegetation Plan for disturbed sites.

There is a Zone A floodplain as delineated by FEMA north of the railroad right-of-way. The property itself is wholly south of the 200 foot railroad right-of-way. Because there are no flood elevations for the property and because the property is in close proximity to the Zone A floodplain, staff is recommending that improvements, including the home and garage, be placed within an area specifically marked by the Floodplain Administrator. The condition says that the developer shall place all improvements within areas marked in the field by the Missoula County Floodplain Administrator.

Staff recommends approval of the Foley Subdivision for Lease or Rent with four conditions of approval.

Chairman Evans stated that the property is not in the floodway. Why is the Floodplain Administrator telling them where to place their house?

Tim Worley stated that in his review, Todd Klietz, Floodplain Administrator, said: "Being separated from the Clark Fork River by both an access road and railroad berm, the subject property is outside of the FEMA designated floodplain. However, at this location, the floodplain designation is merely an Approximate A Zone, meaning that the horizontal limits of the 100 year flood and the 100 year flood elevation have not been determined. Additionally, railroad berms and roads are not considered to be flood control measures." By definition, an A Zone is an undetermined flood area as delineated by FEMA, there are no actual elevations in this location. He and Todd visited the site and Todd felt that staking in a particular location to determine the best area for building would be appropriate considering the close proximity of the Zone A floodplain.

Chairman Evans asked Shannon Foley, the applicant, if she had a problem with this condition.

Shannon Foley stated she questioned the issue at first and have had several conversations regarding it. This application is so her parents can live near them, so they are limited financially as to what they can do if there are several improvements that need to be done. If it pushes the project beyond their budget, they won't be able to go forward.

Colleen Dowdall stated that although this area is not in a mapped floodplain, there is evidence that there could be flooding problems. Todd felt there would be area where the Foley's could be build without doing any fill. This situation has arisen in other subdivisions where much of the land was outside the floodplain but the elevation of the land was lower than the floodplain. The FEMA maps don't match the threat of flooding. The condition is intended to protect the landowner from anything occurring on the property.



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Chairman Evans asked for public comments. There were none.

Commissioner Curtiss stated that the condition is intended to protect her.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Article 3-2(3)(B) of the Missoula County Subdivision Regulations to not provide a 60 foot right-of-way easement width for Bible Lane, based on the findings of fact set forth in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the Foley Subdivision for Lease or Rent, based on the findings of fact in the staff report and subject to the conditions in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Foley Subdivision for Lease or Rent Conditions of Approval:**

**Access**

1. The applicant shall file a document of record with Missoula County waiving the right to protest a future RSID/SID for future improvements to Bible Lane, including pedestrian facilities, 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. Such document shall be filed prior to final plan approval and be subject to OPG and County Attorney's Office approval. *Subdivision Regulations Article 3-2(3)(E) and OPG recommendation.*

**Weeds**

2. The subdivider shall file a development agreement requiring the owner to maintain the property in compliance with the Montana County Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan. The development agreement shall also require revegetation with beneficial species any areas of ground disturbance created by construction or maintenance. It shall also include a Revegetation Plan for disturbed sites that has been reviewed and approved by the Missoula County Weed Board. The development agreement shall be reviewed and approved for filing by the Missoula County Weed District and County Attorney's Office prior to final plan approval. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*

**Fire**

3. Prior to final plan approval, the applicant shall obtain a fire safety permit from the Frenchtown Rural Fire District for fuel reduction. *Subdivision Regulations Article 3-1(1)(F) and Frenchtown Rural Fire District recommendation.*

**Floodplain**

4. The developer shall place all improvements within areas marked in the field by the Missoula County Floodplain Administrator. *Floodplain Administrator recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 2:00 p.m.

**THURSDAY, JANUARY 15, 2004**

The Board of County Commissioners met in regular session; a quorum of members was present in the forenoon. Commissioner Carey was out of the office January 15<sup>th</sup> and 16<sup>th</sup> to attend a funeral of a family member. Commissioner Evans was out of the office all afternoon.

Claims Lists – Commissioners Curtiss and Evans signed two (2) Claims Lists, dated January 12, 2004, with the following grand totals:

- 1) \$8,562.12; and
- 2) \$84,552.70.

The Claims Lists were returned to the Accounting Department.

Claims Lists – Commissioners Curtiss and Evans signed two (2) Claims Lists, dated January 13, 2004, with the following grand totals:

- 1) \$4,808.97; and
- 2) \$12,111.45.

The Claims Lists were returned to the Accounting Department.

Claims List – Commissioners Curtiss and Evans signed the Claims List, dated January 15, 2004, with a grand total of \$9,972.75. The Claims List was returned to the Accounting Department.

**ADMINISTRATIVE MEETING**

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

Subordination Agreement – Chairman Evans signed a Subordination Agreement, dated December 23, 2003 between Neighborhood Housing Services, Inc., Great Falls, 509 1<sup>st</sup> Avenue South, Great Falls, and Missoula County, pursuant to a Promissory Note between the parties secured by a Deed of Trust dated April 30, 2001, and Sarah Koke, 11185 Napton Way #B, Lolo, MT (as Borrower and First-Time Homebuyer who is refinancing) covering the premises described as Lot 7B, Lemm's Townhouse Addition Amended Plat of Lolo Center Block 1 Lots 7 and 8, a platted subdivision. The document was returned to Jenifer Blumberg in the Office of Planning and Grants for further handling.

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Contract – The Commissioners signed a Professional Services Contract between Missoula County and HKM Engineering, Inc., Billings, MT, to remodel a stretch of the Clark Fork River at Missoula, to map flood plains, and report as described and specified in the attached “Preliminary Clark Fork/Missoula Flood Study Scope of Work.” The total amount shall not exceed \$10,000. All other terms and conditions are set forth therein. The document was returned to Jeff Schalow at the Office of Planning and Grants for further signatures and handling.

Contract – The Commissioners resigned a Professional Services Contract (originally signed on December 5, 2003 and subsequently misplaced) between Missoula County and WGM Group, Missoula, to survey the underwater portion of eight cross-sections on the Clark Fork River in coordination with HKM Associates who are remodeling a stretch of the River for the County (see previous journal entry). The total amount shall not exceed \$7,500. All other terms and conditions are set forth therein. The document was returned to Jeff Schalow at the Office of Planning and Grants for further signatures and handling.

Request for Action – Per recommendation of Jane Ellis, Disaster and Emergency Services (“DES”) Director, the Commissioners approved and authorized DES to proceed with contract negotiations with Gillespie, Prudhon & Associates to design the County’s new microwave backbone. DES is also authorized to negotiate a second phase of that contract which would be for project management services for the installation of the new backbone. The overall project is expected to cost approximately \$750,000.

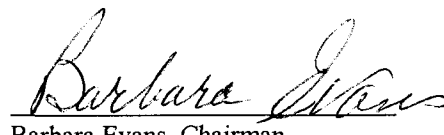
Request for Action – Relating to Homeland Security issues, the Commissioners designated the Disaster Planning Committee as the oversight body for the Missoula Citizen Corps Council and CERT Program (per recommendation of Jane Ellis, Disaster and Emergency Services Director. Grant money is available for CERT training; once training is completed, there is no other grant money for any projects or continuation of the Council or the CERT.

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

**FRIDAY, JANUARY 16, 2004**

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

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, JANUARY 19, 2004****THE COURTHOUSE WAS CLOSED IN OBSERVANCE OF MARTIN LUTHER KING, JR. DAY.****TUESDAY, JANUARY 20, 2004**

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

Claims List – The Commissioners signed the Claims List, dated January 9, 2004, with a grand total of \$8,428.05. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated January 12, 2004, with a grand total of \$21,049.57. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated January 14, 2004, with a grand total of \$1,991.44. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated January 15, 2004, with a grand total of \$6,963.51. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated January 16, 2004, with a grand total of \$47,995.22. The Claims List was returned to the Accounting Department.

Plat and Agreement – The Commissioners signed the Plat and Subdivision Improvements Agreement and Guarantee for Buckhouse Flats, a two-lot subdivision of Tract D, Packwest Addition Lot 2A and Tracts B, C & D, located in Section 2, T 12 N, R 20 W, PMM, Missoula County, a total area of 46.16 acres, with the owner of record being Commercial Properties, Inc. The Improvements Agreement relates to placement of shoulder gravels, topsoil and seed, removal of dirt and gravel haul bridges, and completion of the paved cul d’ sac; said improvements shall be completed no later than September 4, 2004. The estimated costs are \$39,750.00, and have been secured by a Letter of Credit issued by Bitterroot Valley Bank #211.

**ADMINISTRATIVE MEETING**

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

Easements – The Commissioners signed three (3) Easements (submitted for acceptance), dated December 18, 2003 between Missoula County and the Roy L. Prock QTIP Trust (Grantor) for easements over, under, along, and across real property (relating to Maloney Ranch, Phase VIII) as follows:

- 1) A Public Non-Motorized Access Easement for necessary activities related to construction of a public non-motorized trail, relating to Tract 2 of COS 5205, located in Sections 10, 11, 14 and 15, T 12 N, R 20 W, PMM;

- 2) A Public Roadway Easement for necessary activities related to construction of a public roadway and/or public utilities, relating to Lot 9A of COS 5205, located in Sections 14 and 15, T 12 N, R 20 W, PMM; and
- 3) A Public Roadway Easement for necessary activities related to construction of a public roadway and/or public utilities, relating to Tract 2 of COS 5205, located in Sections 10, 11, 14 and 15, T 12 N, R 20 W, PMM.

The documents were returned to WGM Group, Inc. for further handling.

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

**WEDNESDAY, JANUARY 21, 2004**

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

Claims List – The Commissioners signed the Claims List, dated January 16, 2004, with a grand total of \$1,968.67. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated January 20, 2004, with the following grand totals:

- 1) \$48,258.90; and
- 2) \$17,382.29.

The Claims Lists were returned to the Accounting Department.

Claims Lists – The Commissioners signed three (3) Claims Lists, dated January 21, 2004, with the following grand totals:

- 1) \$15,197.72;
- 2) \$5,690.04; and
- 3) \$11,940.80.

The Claims Lists were returned to the Accounting Department.

Plat and Agreement – The Commissioners signed the Plat and Development Agreement for Lower Ninemile Lots, located in the NW¼ of Section 21, T 15 N, R 22 W, PMM, Missoula County, a total gross area of 30.51 acres, with the owner being Go-Si Development, Inc. The Development Agreement, dated December 17, 2003 sets forth the following requirements: 1) Submit plans for a driveway turnaround to the Frenchtown Rural Fire District ("FRFD") for its review and approval; 2) Obtain a Fire Safety Permit from the FRFD; and 3) Install NFR 13 standard residential fire sprinkling systems in the residences and build the driveways according to the approved plans.

Letter – The Commissioners signed a letter, dated January 21, 2004 to Helen Orendain, Missoula, declining to accept her invitation to serve as panelists at the public meeting to be held on February 5, 2004 to discuss the Miller Creek Road EIS, as the BCC feels that any concerns will be addressed in the upcoming public process.

Board Appointment – The Commissioners approved and signed a letter, dated January 21, 2004, to Paul Marshall, Missoula, confirming his appointment as a member of the Missoula Aging Services Governing Board. Mr. Marshall's term will commence immediately and run through December 31, 2006.

Signature Page – The Commissioners reviewed and signed one (1) Claims Signature Page for the Larchmont Golf Course Accounts Payable Invoice Register dated January 20, 2004, in the amount of \$26,878.92. The Signature Page was returned to the County Auditor.

**PUBLIC MEETING – January 21, 2004**

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

**Pledge of Allegiance**

**Public Comment**

None

**Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$257,414.31. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Hearing: Crossroad South Development Park, Lot 2B (2 lots on 5.95 acres) – Whippoorwill, near the Airport**

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

William (B.J.) and Patty Lefler, represented by Ron Ewart of Eli & Associates, are requesting approval of Crossroad South Development Park, Lot 2B, a 2 lot second summary industrial subdivision on approximately 6 acres. The original Crossroad South Development Park Subdivision, filed in 1998, created two industrial lots on 28.32 acres. Lot 2 was subsequently split into Lot 2A (17.78 acres) and Lot 2B (5.95 acres) when the airport purchased Lot 2A. Staff is recommending approval of the Crossroad South Development Park, Lot 2B Subdivision with 7 recommended conditions of approval.

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The property is located on Whippoorwill Drive, approximately 0.5 miles south of West Broadway, to the east of the airport. The property is zoned C-II, Light Industrial. The 1998 Missoula Urban Comprehensive Plan designates the property as Light Industrial and Parks and Open Space. The area designated Parks and Open Space appears to relate to the Airport runway configuration and a buffer for airport security. Lot 2B-1 is proposed to be 2.51 acres in size and Lot 2B-2 is proposed to be 3.44 acres in size. Proposed Lot 2B-1 includes the building for the existing business, BJ Metalworks and proposed Lot 2B-2 is vacant.

The subdivision is located within the Airport Influence Area. John Seymour, Missoula County Airport Authority, stated that future owners should be made aware of the airport influence area and its requirements for construction. Staff recommends that a note be placed on the plat which states that the property is within the Airport Influence Area and subject to the requirements of the Airport Influence Area Resolution.

A north-south easement was dedicated with the original Crossroad South Subdivision. This was initially considered a potential connection, however, due to the close proximity to the airport, the location for a connection has shifted westward. The applicant intends to request a vacation of this road easement through the County Surveyor's Office in the future.

There are two variances being requested. The first variance is to allow for reduced road width from 32 feet to 24 feet up to the existing driveway on proposed Lot 2B-1 and to allow for a reduced paved road width to a 20 foot gravel road beyond this driveway for Whippoorwill Drive.

The Office of Planning and Grants recommends approval of the variance request. Whippoorwill Drive is an existing 20 foot gravel road within an 80 foot public access and utility easement. The applicants, along with four other lot owners on this road, are proposing to improve Whippoorwill Drive to a 24 foot wide paved surface width from the existing driveway on Lot 2B-1 to West Broadway. A 35 foot diameter cul-de-sac is also proposed at the intersection with the existing driveway serving Lot 2B-1. Whippoorwill Drive then continues southward on the subject property at the existing 20 foot wide gravel surface width. No improvements are being proposed beyond the cul-de-sac bulb. The Missoula County Public Works Department supports the applicant's request for a road width variance because creating one additional lot will not significantly impact the service level of the existing 20 foot gravel road. Public Works also stated that the plans to pave and widen the road to the northeast have been addressed in the proposal. Staff recommends conditions of approval that, if this variance is granted, the developer construct a 35 foot paved cul-de-sac bulb at the intersection with the driveway of Lot 2B-1 on Whippoorwill Drive and that Whippoorwill Drive is paved to 24 feet in width from the northeast corner of Lot 2B-2 to the proposed cul-de-sac. There is a statement on the plat waiving the right to protest an RSID/SID for future road improvements to Whippoorwill Drive.

The second variance is from the requirement that all rural subdivisions within the Urban Growth Area with a lot frontage of 175 feet or less have 5 foot wide concrete boulevard sidewalks on Whippoorwill Drive. Staff recommends approval of the variance request. The Public Works Department supports the variance request due to the lack of existing facilities within proximity of the subdivision. The RSID/SID for Whippoorwill Drive includes non-motorized facilities.

Other conditions of approval include:

- The subdivider provides a source of water for fire suppression for this subdivision in conformance with Subdivision Regulations to be reviewed and approved by the Missoula Rural Fire District prior to final plat approval.
- For a covenant which requires lot owners to maintain their lots in compliance with the Noxious Weed Control Act and Management Plan and revegetation of lot disturbance.
- That the covenants advise property owners that EPA has designated Missoula County as a zone having a high radon potential and that all new construction incorporate passive radon mitigation systems.
- That the applicant petition for inclusion in the Missoula Urban Transportation District.

As this request is for a second summary subdivision, it was heard before the Planning Board. The Planning Board recommended approval of the two variances and the subdivision based on staff's recommended conditions. They added an additional condition, which reads: "When a request is made to vacate the existing 80 foot collector road easement, that the BCC strongly consider Planning Board's recommendation that the road easement be maintained or that it be relocated to the eastern edge of parcel 2B-2."

Ron Ewart, Eli and Associates, developer's representative, stated that there were no problems with any of the conditions. Originally, four of the landowners were going to pitch in to pave the road; some of the other landowners did not want to participate. The price for reconstructing the road is more than expected, so the landowners are now considering creating an RSID to pave Whippoorwill Drive so everyone would share in the cost. The road easement was originally placed on the subdivision as there were plans to try to figure a way to get from West Broadway to Mullan Road. Subsequently, the connection was moved further to the east, so a statement was included in the submittal that the easement might be vacated. Planning Board took a long time discussing the vacation of this easement. They do not think it should be vacated because it may possibly be needed in the future. It is conceivable that it could be needed in the future and Mr. Lefler doesn't care one way or the other. There are no plans to vacate the easement at this time.

Greg Robertson stated there have been some preliminary discussions with the Airport, talking about making a connection between Mullan Road and West Broadway/Airway Boulevard. The location is further north than this subdivision and would be through other parcels. It fits with the Airport's plans and makes a lot of sense from a transportation standpoint. Vacation of this easement would be appropriate as the alignment doesn't work where it is located. The Dougherty property will be the primary contributor of the north/south connector.

Colleen Dowdall stated that the easement that was created on the prior plat cannot be deleted during this subdivision hearing. If an additional easement is granted, this property would be encumbered with a lot of easements for a connection that is uncertain on this property. If Mr. Lefler brings in a petition to abandon this easement, the Board could alter the right-of-way to the east side.

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Greg Robertson stated that a condition was not necessary at this time, since the location has not been finalized.

Commissioner Curtiss asked if the RSID that Mr. Ewart mentioned would pave Whippoorwill all the way back to Highway 10.

Ron Ewart stated that was correct. Also, for the Board's information, the Airport might be purchasing Lot 2B-2.

Chairman Evans opened the public hearing.

Greg Robertson stated that during the staff report, it was mentioned that the cul-de-sac should be a 35 foot diameter. That should actually be a 35 foot radius, within a 50 foot radius right-of-way.

Commissioner Curtiss asked if there should be language added to the condition providing a source of water for fire suppression, so that Public Works could approve the location of fire hydrants.

Greg Robertson stated that would be appreciated.

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(3) of the Missoula County Subdivision Regulations that requires a 32 foot paved width for Whippoorwill Drive, based on the findings of fact set forth in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

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

Commissioner Carey moved that the Board of County Commissioners approve the Crossroad South Development Park, Lot 2B Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report.

Commissioner Curtiss amended the motion to approve the subdivision based on the conditions from staff, rejecting the Planning Board's additional condition, and to amend Condition 3 relating to fire protection to include "Missoula County Public Works" after "Missoula Rural Fire District." She then seconded the motion. The motion carried on a vote of 3-0.

#### **Crossroad South Development Park, Lot 2B Subdivision Conditions of Approval:**

##### **Roads**

1. Whippoorwill Drive shall be improved to a 24 foot paved surface width from the northeast corner of Lot 2B-2 to the proposed cul-de-sac intersection with the driveway on Lot 2B-1. Plans for widening the road shall be subject to review and approval by Missoula County Public Works Department prior to final plat approval. *Subdivision Regulations Article 3-2(3) and OPG recommendation.*
2. A 35 foot paved cul-de-sac bulb within a 50 foot radius public access and utility easement shall be constructed at the intersection with the driveway in Lot 2B-1 on Whippoorwill Drive. The cul-de-sac bulb easement shall be shown on the final plat subject to review and approval by Missoula Rural Fire District and Missoula County Public Works Department prior to final plat approval. *Subdivision Regulations Article 3-2(11)(A) and OPG recommendation.*

##### **Fire**

3. The subdivider shall provide a source of water for fire suppression for this subdivision in conformance with Subdivision Regulations Article 3-7(1). Final plans and installation of the source of water shall be reviewed and approved by the Missoula Rural Fire District and Missoula County Public Works Department prior to final plat approval. *Subdivision Regulations Article 3-7(1) and Missoula Rural Fire District recommendation.*

##### **Airport**

4. 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." *Subdivision Regulations Article 3-1(2) and OPG recommendation.*

##### **Noxious Weeds**

5. An additional covenant shall be filed with the Clerk and Recorder which requires lot owners to maintain their lots in compliance with the Montana County Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan. Language stating that lot owners are required to revegetate any ground disturbance caused by construction or maintenance with beneficial species after construction or maintenance is completed shall be incorporated into the covenants, subject to review and approval by the Weed District. *Subdivision Regulations Article 3-1(2) and Weed District recommendation.*

##### **Health**

6. The covenants shall advise property owners that EPA has designated Missoula County as a zone having a high radon potential and that all new construction incorporate passive radon mitigation systems. *Subdivision Regulations 3-1(2) and City-County Health Department recommendation.*

##### **Missoula Urban Transportation District**

7. The applicant shall petition for inclusion into the Missoula Urban Transportation District subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-2 and Missoula Urban Transportation District recommendation.*

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

**THURSDAY, JANUARY 22, 2004**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Carey was in Helena attending a MACo Land Use Planning & Development meeting.

ADMINISTRATIVE MEETING

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

Contract – The Commissioners signed an on-going Professional Services Contract between Missoula County and Quality Maintenance for custodial services at the Missoula County Courthouse and Annex, Health Building, Public Defenders Office, Youth Court, Print Shop, Extension Service, and Missoula In Motion. The term will be December 1, 2003 through December 31, 2004. The total amount is set forth in the attached price breakdown per building, and reflects a 4% increase (which is the first increase since 1999). All other terms and conditions are set forth therein.

Agreement – Chairman Evans signed an Agreement for Engineering Services, dated January 22, 2004 between Missoula County and HDR Engineering, Inc. for the development of a Capital Facilities Plan for the Lolo RSID No. 901 Water System Facilities Study. The estimated amount of the project is \$13,715.00. All other terms and conditions are set forth therein. The document was returned to Greg Robertson, Public Works Director, for further signatures and handling.

Other items included:

- 1) The Commissioners scheduled a Detention Center Inspection for February 2, 2004, 1:00 pm – 3:00 pm.

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

**FRIDAY, JANUARY 23, 2004**

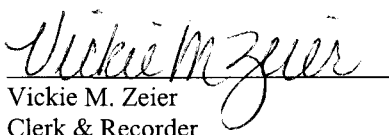
The Board of County Commissioners met in regular session; all three members were present.

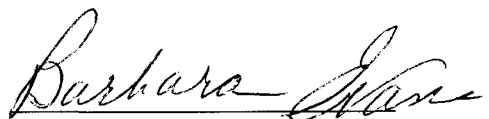
Claims Lists – Commissioners Carey and Curtiss signed two (2) Claims Lists, dated January 22, 2004, with the following grand totals:

- 1) \$21,224.12; and
- 2) \$54,671.18.

The Claims Lists were returned to the Accounting Department.

Plat and Agreement – The Commissioners signed the Plat and Subdivision Improvements Agreement and Guarantee for Traveler's Rest Estates, an urban-suburban residential subdivision located in the NE¼ of Section 34, T 12 N, R 20 W, PMM, Missoula County, a total area of 25.32 acres, with the owner of record being Cahalan Farms LLC. The Improvements Agreement is for water, sewer and street, and drainage improvements; said improvements shall be completed no later than September 29, 2004. The estimated costs are \$388,358.75, and have been secured by a Letter of Credit from Community Bank-Missoula, Inc.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**SATURDAY, JANUARY 24, 2004**

Commissioner Curtiss attended an all-day Partnership Health Center Board Retreat held at Holy Spirit Episcopal Church.

**MONDAY, JANUARY 26, 2004**

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 Lists – The Commissioners signed three (3) Claims Lists, dated January 23, 2004, with the following grand totals:

- 1) \$22,501.62;
- 2) \$94,515.47; and
- 3) \$55,829.61.

The Claims Lists were returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated January 26, 2004, with a grand total of \$803.25. The Claims List was returned to the Accounting Department.

Proclamation – The Commissioners and Mayor Mike Kadas signed a Proclamation declaring January 29, 2004 as *Homeless Memorial Day*, urging all citizens to learn more about the housing crisis facing our City and County and to contribute in whatever way they can to the care and shelter of the homeless in our midst.

**TUESDAY, JANUARY 27, 2004**

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

Claims Lists – The Commissioners signed three (3) Claims Lists, dated January 26, 2004, with the following grand totals:

- 1) \$158,717.83;
- 2) \$13,750.86; and
- 3) \$74,765.90.

The Claims Lists were returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated January 27, 2004, with a grand total of \$10,343.88. The Claims List was returned to the Accounting Department.

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Drew Rieker as applicant for Missoula County Accounting Office (Payroll) Warrant #278617, issued September 5, 2003 in the amount of \$92.33 (for 20 hours of regular pay at the Fair). No bond of indemnity is required.

**ADMINISTRATIVE MEETING**

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

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 02 – CY2004 - Pay Date: January 23, 2004. Total Missoula County Payroll: \$886,727.91. The Transmittal Sheet was returned to the Auditor's Office.

Resolution No. 2004-010 – The Commissioners signed Resolution No. 2004-010, dated January 27, 2004, a Resolution granting inclusion/annexation for parcels in Rural Special Improvement District No. 901 (per petitions attached to the Resolution).

Request for Action – Chairman Evans approved and signed the subgrant application to the Montana Board of Crime Control ("MBCC") for continued funding of the West Central Montana Drug Task Force for the 2004-2005 fiscal year. This is the sixth year under the original grant. The MBCC provides \$149,734 to the Task Force; the match is \$49,912, for a total of \$199,646. This amount reflects an approximate 4% increase over FY 2003. The document was returned to Steve Ruguleiski in the Sheriff's Department for further signatures and handling.

Extension Request – The Commissioners approved and signed a letter, dated January 27, 2004 to Ron Ewart, Eli & Associates, approving his request for a six-month extension of the final plat approval deadline for the Tannie Subdivision. The new deadline will be July 17, 2004.

Resolution No. 2004-009 – The Commissioners approved the reconsideration regarding the name change of Tree Line Loop Road to Lamar Trail North, and signed Resolution No. 2004-009, dated January 27, 2004, renaming the private right-of-way of Tree Line Loop Road to Lamar Trail, located in Section 15, T 11 N, R 20 W, Missoula County, Montana (in the subdivision known as Carlton Heights North). The majority of affected landowners are in favor of the name change.

Board Appointments – The Commissioners approved and signed two (2) letters, dated January 29, 2004 to the following, confirming their appointments to the Missoula Planning Board: 1) reappointment of Dan R. Bucks to a three-year term as a member; and 2) appointment of Tim Ibey to a three-year term as a "regular member." Both terms will commence immediately and run through December 31, 2006.

Other items included:

- 1) Commissioners Evans and Carey will attend the Annual MAEDC (Missoula Area Economic Development Corporation) Membership & Awards Luncheon, to be held on February 10, 2004 at the Holiday Inn.

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

**WEDNESDAY, JANUARY 28, 2004**

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioners Carey and Curtiss attended an Eagle Scout Award Presentation to Eric Dowling held at St. Anthony's Church.

**CHIEF ADMINISTRATIVE OFFICER MEETING**

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

Lease Agreement – Per recommendation of the Missoula County Park Board, the Commissioners signed a Lease Agreement, dated January 28, 2004 between Missoula County and Westside Little League (a Montana non-profit corporation) for a 10-year lease extension for property at Big Sky Park, for the rental sum of \$1.00. The lease will



extend until January of 2014. All other terms and conditions are set forth therein. The document was returned to Lisa Moisey, County Parks Coordinator, for further signatures and handling.

Task Order – Chairman Evans signed Task Order No. 04-07-04-51-017-0 to the Missoula City-County Health Department Master Contract between the Montana Department of Public Health and Human Services and Missoula County for the provision of human immunodeficiency virus (“HIV”) prevention counseling and testing services to assist in prevention of the spread of HIV. The total amount of this Task Order shall not exceed \$18,150 (approximately 605 tests) for HIV counseling services, and \$8,373 for HIV test kits and controls or lab fees. The term will be January 1, 2004 through December 31, 2004. The document was returned to the Health Department for further signatures and handling.

Contracts – The Commissioners signed three (3) Professional Services Contracts between Missoula County and the following agencies for the provision of Smoking Cessation Programs: 1) The Parenting Place; 2) W.O.R.D.; and 3) the Missoula Indian Center (program geared toward American Indian population). The total amount of all each contract shall not exceed \$4,000. The term for each contract will be February 1, 2004 through December 31, 2004. All other terms and conditions are set forth therein.

Other items included:

- 1) A discussion was held and Facilities Manager Larry Farnes will coordinate with Frank Sennett on the possibility of returning the annual Hellgate Rendezvous Arts & Crafts Fair to the County Courthouse lawn.

#### **PUBLIC MEETING – January 28, 2004**

The Public Meeting was called to order at 1:30 p.m. by Commissioner Chairman Barbara Evans. Also present were Commissioner Bill Carey, Commissioner Jean Curtiss, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall and Assistant County Public Works Director Chuck Wright

#### **Pledge of Allegiance**

#### **Public Comment**

Anne Rupkalvis stated that she lived in Target Range and wanted to thank whoever was responsible for filling potholes in the area.

Chairman Evans stated that Greg Robertson, Director of Public Works, was the person to whom thanks should go.

#### **Routine Administrative Actions**

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$584,857.44. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

#### **Hearing (Certificate of Survey): Jensen Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract B-1 of COS 5323, located in the southwest one-quarter of Section 5, Township 12 North, Range 19 West.

George L. Jensen has submitted a request to create two parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 7.43 acres in size located near Missoula, Montana. George Jensen proposes to create one approximately 1.86 acre parcel for transfer to his daughter, Kristy Jensen Warycha and create one approximately 3.72 acre parcel for transfer to his wife, Shirley A. Jensen, for residential purpose and keep the remaining approximately 1.86 acre parcel for residential purposes as well.

The history of the parcel is as follows: The property, Tract 1-B, is a portion of a parcel that was originally created as an “Agricultural Exemption” parcel (Tract 1, COS 1152). Owner Gregory C. MacDonald and Marsha Frey divided Tract A, COS 1152 by Court Order into Tract 1-A and Tract 1-B. Resolution Number 2003-116, signed by the Board of County Commissioners on October 31, 2003, revoked the agricultural covenant. Tract 1-B was deeded to George Jensen in November 2003.

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act, except as listed below:

- COS 1712** To relocate a common boundary line between two existing parcels located in the north one-half of the southeast one-quarter of Section 20, Township 13 North, Range 19 West.
- COS 2988** Tract A, occasional sale and Portion B, divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties. Located in the northwest one-quarter of Section 5, Township 13 North, Range 19 West.
- COS 5008** To retrace the exterior boundaries of an existing parcel and no division of land located in the southeast one-quarter of Section 21, Township 13 North, Range 19 West.
- COS 5313** To show the retracement of the exterior boundary of an existing parcel and to depict Boundary Lines of Agreement located in the southeast one-quarter of Section 20, Township 13 North, Range 19 West.

Dick Ainsworth, Professional Consultants, Inc., stated that he was representing George Jensen. Mr. Jensen is interested in building a home on proposed Parcel A. For estate planning purposes, he would like to create the other two parcels.

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

George Jensen was present and came forward to answer any questions the Board may have.

Commissioner Curtiss stated that in the research done, it was noted that the land was owned by Mr. Jensen and his brother Bob. There is no record that Bob transferred his interest to George. Is the property still in both names.

George Jensen stated the land is in both names at the present time.

Commissioner Curtiss asked counsel if a family transfer could be approved if the land was in both names.

George Jensen stated the intent is for Bob to transfer his interest.

Colleen Dowdall stated that Bob's interest must go to George Jensen so he can then do a family transfer. Bob cannot transfer property to his niece and sister-in-law. Only George can transfer property to his wife and child.

Dick Ainsworth stated that Mr. Jensen was aware of that requirement.

Commissioner Curtiss asked if the Board had to wait until that occurred to approve this family transfer.

Colleen Dowdall stated that the Board is approving the transfer to occur in this way. When the deed comes to the Clerk and Records Office, they would recognize that the transfer has to be from George Jensen to his wife and daughter.

Commissioner Curtiss stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. She asked Mr. Jensen if he was going to transfer this land to his wife and daughter.

George Jensen stated that was correct. The parcel being transferred to his wife was for estate planning purposes and he plans to build on the parcel he is retaining.

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

Chairman Evans stated that Mr. Jensen would receive a letter of approval within a week or two. All necessary permits and other requirements will need to be obtained to build on the land. The approval today is only for the division of land; it does not guarantee access or services, nor does it grant Health Department, zoning or planning approval.

#### **Hearing (Certificate of Survey): Galbreath Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 1 of COS 2664, located in Section 34, Township 15 North, Range 20 West.

Bruce Galbreath has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 2.65 acres in size, located near Evaro, Montana. Mr. Galbreath proposes to create one approximately 1.8 acre parcel for transfer to his daughter, Heather Galbreath Merrell, for residential purposes and keep the remaining approximately 1.47 acre parcel for residential purposes as well.

The history of the parcel is as follows: Frank and Margaret Adams purchased a 10 acre parcel in 1967 from Robert and Mary Richardson. COS 2664 was filed in September, 1981, creating Tract 1, 2.65 acres, as a family transfer to Thomas C. Adams, Frank and Margaret's son. A notice of purchasers interest was filed in January, 1982, by Vern K. Wilson. In June, 1992, Robert Morigeau filed a notice of purchasers interest. Mr. Morigeau filed a quit claim deed in March, 1994, deeding Tract 1 to Gordon Hirschi. Mr. Hirschi filed a notice of purchasers interest in September, 2003, naming Bruce Galbreath as the purchaser.

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

Bruce Galbreath was present and came forward to answer any questions the Board may have.

Commissioner Carey stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. He asked Mr. Galbreath if he was going to transfer this land to his daughter.

Bruce Galbreath stated that was correct. His daughter and son-in-law are in the Navy and would like to reside in Missoula when their military service ends.

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

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

Hearing: Petition to Extend Hayes Creek Road (Blue Mountain area)

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This is a petition to extend Hayes Creek Road “from the intersection of Hayes Creek Road and Skyway to the southern end of Forest Hill across the southeast corner of the Blue Mountain Recreation Area, located in Missoula County, Montana.”

The reasons for the request are as follows:

1. This would create a second access/exit route for residents of the area.
2. Due to the increased traffic on Highway 93, this would allow residents of the area to turn onto the highway at the Blue Mountain Road stop light.

The following landowners have been notified:

Bruce N. Allen	Paul M. Rowland Ann Batchelder	Allen Lee
Michael Hickey Marjorie Hickey	Henry A. Balstic Jr. Beth A. Balstic	Joseph L. Boddy Marlys C. Boddy
Gary Edward Collins	Alex Keith Lenard Lisa Karin Lenard	Marc D. Medeiros Sherrie A. Medeiros
Dana P. Lund Cristy A. Lund	Carol Harmon Jean Van Allen	Hugh W. Smith Dorothy D. Smith
Sandra Perry	Kenneth B. Henegar Carole A. Henegar	Dennis R. Gibbs Donna J. Gibbs
John S. Knudsen Lauren J. Knudsen	Ernest R. Dewey Kerry J. Dewey	Jerry L. Anderson Marion Anderson
Peter B. Odegard Elizabeth A. Odegard	Gregory J. Patent Dorothy H. Patent	Raymond Cross Kathleen Johnston
Robert G. Whaley Lawana Whaley	Rodney E. Nelson Marilyn M. Nelson	Diana L. Six Kirby Whetstine
Daniel Ray Prideaux Denice R. Prideaux	Jack C. Ward Betty J. Ward	Anthony C. Gallegos Marva Moore
Chris T. Stenier	Robert Dennis Rangitsch	William J. Reneau Susan C. Reneau
Robert E. Chafee Julie A. Chafee	Katherine Baublitt	Jim A. Holland Vicki L. Holland
Gerald E. Evans Roberta D. Evans	Dennis L. Curran Bonnie L. Curran	Martin J. Beebe E. Joan Beebe
Stephen F. McCool Ann E. McCool	Mary C. Langenderfer	Thomas B. Vacura
Francis D. D’Andraia	Lavern Schwartz Janet Schwartz	Nancy Van Allen
Tyrone G. Anderson Nancy M. Anderson	Anne M. Reinhard	Heidi L. Efinger Robert A. Efinger
Roger J. Hagglund	James L. Rang Melinda Rang	Robert M. Scotson Amy L. Scotson
Gary Edward Collins	Woodland Heights Homeowners Sanitary Association	Brad C. Steiner
J. David Roberts Jill W. Roberts	Gordon A. Fluke Trustee	Raymond Ford Jr. Maureen M. Fluke
Jason Sims Vickie L. Sims	Blake A. Love Kathy M. Love	Geoffrey L. Scott Melody C. Scott
Flaten Family Trust	Norman G. Lavery Marion B. Lavery	Lucas Osellame
Teresa K. Manlove	Milton Datsopoulos Joan Datsopoulos	Mary C. Langenderfer, MD
Christopher B. Swartley Mary J. Swartley	Wayne Henry Hightower Lucinda Hightower	Michael R. Strawbridge
Sandra Perry	Kathryn Marie Moene	Michael Elvis Gray Patricia A. Gray
Michael K. Garrick Debra J. Garrick	Shawn K. Kitley Lisa J. Kitley	Greg Chiropoulos Cheryl A. Chiropoulos
United States of America	Carol J. Harmon	Hugh W. Smith Dorothy D. Smith

Don Carroll, District Ranger, Missoula Ranger District of the Lolo National Forest, stated that the reaction to this petition is probably the same as many folks. The Blue Mountain Recreation Area is important for recreation, wildlife, open space and the Forest Plan speaks to that. Based on the plan, they would say no to building a road across the Blue Mountain Recreation Area. That fact aside, if this were on any piece of national forest, the answer would be no if a right of access already exists. The Forest Service gets many requests for access through or around the perimeter of a national forest from everywhere in the nation. If access were provided to everybody who lived on the edge of a national forest, there would be quite a few roads created. Again, if access is available, the discussion with the Forest Service ends. If there is not access, the discussion would be to determine if some other access through private land could be obtained. Their position on this request is no, based on the Forest Plan and no, based on the fact that Hayes Creek homeowners already have access. With that said, if the County wishes to pursue this, the Forest Service will discuss the situation with officials. It would have to go through a public process and a NEPA process. Alternative access to the area would have to be explored to address the homeowners concerns.

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Chairman Evans asked counsel if the Board of County Commissioners should proceed with a public hearing regarding land over which they have no control.

Mike Sehestedt stated that the Board of County Commissioners should conduct the public hearing as it has been published and noticed as such. Because this is a petition to open a new County road, the hearing needs to be adjourned and a site inspection needs to be conducted, after which a report and recommendation will be given to the Board, then a decision can be made. He asked about Mr. Carroll's statement that if the County made a request to the Forest Service for the right-of-way, there would be a possibility that something could happen.

Don Carroll stated the discussion would start with no, not through the national forest, but discuss other ways to get into the area. The emergency egress in case of fire or other situations might be discussed. If people need to get out across the national forest, residents could swing the gate open, cut the lock, cut the fence, whatever is necessary in the event of an emergency. Most residents in Hayes Creek know that is the case if they need to get out during emergency situations.

Chairman Evans opened the public hearing. She asked that testimony be kept to a minimum. Proponents comments would be heard first, followed by opponents comments.

Gerald Evans, 7145 Devonshire Lane, stated that he initiated the petition. He wanted to make it clear that for a number of people who signed the petition, this option is toward the bottom of their list of preferences. There have been several attempts made to work with the State Highway Department and other sources to address the issue of safe access to the subdivision. Contrary to what was stated in the paper, this was not lack of planning on the residents part. The subdivision existed long before the traffic on Highway 93 reached its current critical levels. The turn to Highway 93 is a source of numerous accidents and great danger. There are a number of children in the neighborhood who will be driving soon. The Highway Department denied every attempt made to have something done at that intersection. Once the possible and plausible are ruled out, the next step is to look at the impossible. He is not overwhelming in favor of this route, but took the initiative on several occasions to suggest what might be a possibility. He is not under any illusion that this is a doable thing, although they were led to believe by the former County Surveyor that the correct process was to first petition the County and that the County had to talk with the Forest Service. This was never a group of citizens requesting permission from the Forest Service. As Mr. Carroll stated, if private citizens are asking, the answer is no. It is a different story if the County is asking. They are just following the procedure they were instructed to use. If the answer to this request is no, he would be interested in hearing what the Commissioners and citizens propose as a positive, proactive solution to the problem.

Commissioner Carey asked what reasons were given by MDT for not being able to help.

Gerald Evans stated that residents first requested a light at Hayes Creek Road and Highway 93. MDT said no because a light, while it might decrease turning accidents, would increase rear-end collisions. They asked for the speed limit to be enforced. It was stated that people drive 65 mph, however, that is not the case. If there is glare ice, traffic might slow down to 65 mph. Anyone who drives in that area knows what the traffic is like. One of the options explored for a bridge coming from the Miller Creek area was aligning it near Hayes Creek Road. That was deemed not acceptable. The preferred alternative will remove the light at Blue Mountain Road and install an interchange. The small break in traffic generated by the light at Blue Mountain Road would then be eliminated. MDT's reasons for denying their requests were probably all good. He did give MDT credit for proposing a new road that would align with an existing road, that is not always the case. However, the residents in the Blue Mountain area are not happy with the preferred alternative.

Chairman Evans stated for the record that she was not related to Gerald Evans.

Norm Lavery stated that he was the president of the Hayes Creek Homeowners Association. The residents in the Hayes Creek neighborhood are in concert with Jerry Evans about the issue of traffic safety. They are all concerned and at times frightened. Traffic flow has increased substantially over the last 10 to 15 years and they are in the process of documenting the numbers with MDT. The number of accidents has increased substantially on Highway 93 between Highway 12 in Lolo and Reserve Street, and he has tabulated that data. Additional information is being gathered so everyone can better understand the issues of traffic flow and safety. The intent is to take a positive step of drafting a value statement about the traffic safety issue. They are inviting everyone in the neighborhood to sign and affirm that statement. He read the statement into the record: *"We, the undersigned residents of the Hayes Creek neighborhood, affirm the following statement regarding the Miller Creek Road project. Any proposal to provide bridge access across the Bitterroot River to homes in the Miller Creek area that has a negative impact on the safety of individuals who enter State Highway 93 from Hayes Creek Road is unacceptable. The traffic light at Blue Mountain Road provides a break in southbound traffic that we now use to enter the northbound lane of Highway 93. The traffic light at Blue Mountain Road slows vehicle speed in the northbound lane in the vicinity of Hayes Creek Road during rush hour. Removal of the traffic light at Blue Mountain Road is unacceptable as are all other proposals that would negatively impact the safety of our residents in any way."* To date, 23 of the residences in the Hayes Creek neighborhood have been contacted. There are a total of 52 residences that gain access to their property from Hayes Creek Road. The 23 contacted have enthusiastically signed and supported the document. It is his intent to reach all residences by February 16, 2004 and submit their names to the Board as an indication of their concern about traffic safety for everyone. To further support the concern about traffic safety, the community is willing to dedicate their time and energy to reach a positive resolution of the situation. They are willing to work with others along the Highway 93 corridor between Lolo and Missoula to address the safety issues everyone has concerns about. The Board of County Commissioners is a valuable resource in terms of convening a group process to address this issue. He hoped the concerns would be acknowledged and that the Commissioners will take it seriously and help everyone work on the issue. Lives are at risk and the risk increases every day.

Steve McCool stated he was a long time resident of Hayes Creek. He has raised 5 daughters and watched them get their driver's licenses and take their chances to get onto Highway 93. Underlying the petition which Norm and Jerry mentioned is the deep, widely shared concern about the safety of getting onto Highway 93. An access across the Lolo National Forest is probably not the most appropriate way to deal with the concern and he is not completely in favor of putting a road across there. The concern about traffic is shared by people who live on Cochise and Wornath and other neighborhoods along the north and west sides of Highway 93 to Lolo. It would be useful for the Commissioners to

sponsor and sanction a community level assessment of the safety issues. Working with traffic engineers and planners, everyone could come up with a creative solution – a different highway configuration, traffic lights, lower speed limit, etc. Jerry mentioned that he has tried on a number of occasions to get some constructive response from MDT but is out of options. It is time to look at this from a community level and get others involved who share these concerns to develop solutions that could then be presented to the Board of County Commissioners.

Susan Reneau, 5425 Skyway Drive, stated that her house is near the intersection of Hayes Creek Road and Skyway Drive. She shared Jerry's concerns deeply and helped to circulate the petition for a stoplight at Hayes Creek Road and Highway 93. She has had three sons nearly killed when pulling out onto Highway 93. She does, however, stand in opposition to any human development on Blue Mountain Recreation Area for the reason that this is a national recreation site and no human development must ever be allowed. The safety issue is horrendous. She presented a letter to the Commissioners but did not read it into the record. She also distributed a flyer regarding a public meeting called by citizens regarding the Miller Creek Bridge. The Commissioners have declined to participate in the meeting as they feel it is premature. However, she disagreed, now is the time to start talking about it. She formally invited the Commissioners to attend the meeting. Hayes Creek residents agree with everyone along the Highway 93 corridor about the safety issue. However, the Blue Mountain Recreation Area is in jeopardy.

Helen Orendain, 2555 Blue Mountain Road, stated she empathized with the Hayes Creek residents risking life and limb making a left turn on Highway 93. She is opposed to carving up Blue Mountain National Recreation Area. There has to be a solution to the problem and she is prepared to offer one. Many Missoula residents are concerned about the negative impact on the recreation area if the overpass and interchange linking Miller Creek Road occurs at Blue Mountain Road. Presently, there is a traffic light at the intersection of Blue Mountain Road and Highway 93. Blue Mountain, Big Flat and Target Range residents are on record opposing this overpass and interchange, fearing Blue Mountain will become the entrance to a western bypass. The County may not call it that, but in essence it would serve as one on a dangerous, substandard road. In the January 15th Missoula Independent, Barbara Evans was quoted in regard to those who fear a western bypass: "No, there will not be a bypass. I want to spell that out in capital letters," County Commissioner Barbara Evans said. "There is not money for a bypass there and they made it very clear that they do not want a bypass. I'm not inclined for a bypass. I don't care to have those folks come unglued." She interprets the quote to mean that connectivity or a bypass is not a requirement for an interchange. Residents concur with Commissioner Evans. They do not want to become unglued. It would be reasonable to allow Hayes Creek to be the recipient of the Miller Creek overpass and interchange. Blue Mountain Road would keep the traffic light. Hayes Creek would have a safe entrance to Highway 93. The recreation area would not be in jeopardy. The Blue Mountain, Big Flat and Target Range residents would remain glued.

Vince Marciano, 4690 North Wornath Road, stated that his concern is the same as everybody else. This is a bad idea to go into the neighborhood with a bypass across the national forest. The main reason is because the light will be removed at Blue Mountain Road if the interchange alternative is accepted. The residents have been trying to tell anyone who will listen that the impact is the problem. They will be impacted by everything that might be done. There is a study underway to get everyone to look at other options. The preferred alternative will negatively impact the area; it is not a good idea.

Don Peressini, 4800 Evergreen, stated he was confused, the legal ad showed a connection from the end of Skyway to the end of Forest Lane which does not encroach on Forest Service land. Later on, it showed a connection over Forest Service Land.

Commissioner Curtiss stated that the edge of Skyway Drive by the big meadow is Forest Service land.

Don Peressini stated that this all goes back to the Blue Mountain crossing to Miller Creek as that is where the light will be removed. This will give Hayes Creek residents no opportunity to get on the highway. The surrounding neighborhoods are opposed to the Blue Mountain alternative. They feel that enough emphasis has not been focused on improving the Miller Creek Road Wye. That road needs to be improved before an environmental impact study can be completed on any of the alternatives.

Chairman Evans stated there has not been a final decision from the consultants regarding the Blue Mountain alternative.

Greg Robertson stated that there are three alternative alignments. The Highway Administration has asked the consultants to fully analyze all three alternatives, which they are in the process of doing. He expects the results should be out sometime this spring. It is premature right now, FHWA has to follow the NEPA process and they are at the analysis stage, not the selection stage. To date, the process has included elimination of unrealistic options or ones that had a fatal flaw based on criteria established by the consultant, the FHWA and other participants.

Chairman Evans stated that they do not have a final decision on which to base comments.

Don Peressini stated that Blue Mountain is the preferred alternative. In the last meeting with Carter-Burgess, they explained the intersection they were proposing, that the light would be removed. He understands it is still in the study phase, but it makes residents nervous. The 1997 Miller Creek Comprehensive Plan picked the Blue Mountain crossing as well. The residents feel that if the Blue Mountain crossing is constructed, it will create more problems for Hayes Creek and other residents, it will become a traffic commuter route through the recreation area and overburden the Maclay Bridge to the point of needing a new bridge. It will all be very expensive and will continue on to affect the Target Range area. The Miller Creek Road situation should be fixed before a bridge is constructed. If a bridge has to be built, put it at Hayes Creek.

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

Mike Sehestedt stated that the statute for petitioning for a road requires a petition, public hearing and site inspection. The public hearing should be continued. After the site inspection, a report will be given to the Board. Further public testimony will be allowed then the Commissioners would make their decision whether to grant or deny the petition.

Chairman Evans asked if there was a specific time limit for conducting the site inspection and making a decision.

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Mike Sehestedt stated there is none specifically spelled out in the statute, but within a reasonable amount of time is implied.

Chairman Evans stated that she would like to call a meeting with the State Department of Transportation, Greg Robertson, the Forest Service and the County Commissioners to see if there is some way to help these folks before they say yes or no on the petition.

Mike Sehestedt stated that the site inspection must be conducted. If the process is to start over, it would require another petition with its associated costs. The site inspection may provide an answer as to where this could potentially be located. His recommendation would be to deal with this petition. There are several other complex issues related to Highway 93 from the Buckhouse Bridge to Lolo and work must be done with MDT on solutions.

Commissioner Carey asked if there is a specific location chosen for this road. What would the site inspection be looking at.

Greg Robertson stated there is physically nothing there to look at. Private ownership could be looked at to see if there is an alternative alignment that might work that is not across Forest Service land, if the Commission decides they want to proceed with a connection.

Mike Sehestedt stated the site inspection looks at what has been petitioned, a road connection. There is a tentative route shown in the petition. The site inspection report may come back with a recommendation for a more specific alignment. Topography and ownership limits are obtained during the site inspection. The Forest Service’s opposition is important in the decision, but the Board needs to follow the process for establishing a road. If the Board decides a road is a good idea, that leads to the next question of who should pay for it and what the costs would be.

Commissioner Curtiss stated that she agreed a discussion on the whole issue needs to be convened. The consensus of everyone, even those proposing the petition, is that the traffic problem as a whole needs to be addressed. She felt the procedure to deal with this petition should be completed.

Mike Sehestedt stated this is a petition for a specific road and the petition needs to be dealt with following the procedure laid down by the Legislature.

Commissioner Carey stated that in an emergency, residents could leave through the Blue Mountain area. Does that option actually work.

Don Carroll stated that it did actually work, residents could drive through the area in an emergency situation.

Commissioner Carey stated that the problem lies with fixing Highway 93.

Chairman Evans stated that by law, one Commissioner and the Public Works Director must conduct a site inspection. That will be done prior to next Wednesday, February 4, 2004, at which time a decision will be made.

**Hearing: Petition to Establish Rowan Street as a County Road (between Lolo and Florence)**

This is a petition to establish “Rowan Street, located in the northwest one-quarter of Section 14, Township 11 North, Range 20 West, Principal Meridian, Montana, Missoula County, Montana, from the end of that portion of the Bitterroot to Bannack Road within the 60 foot wide Rowan Street right-of-way; thence, westerly approximately 2,116 feet to the easterly right-of-way of Queen Anne’s Lane.”

The reasons for the request are as follows: 1) As a public roadway, Rowan Street would be eligible to utilize public funding and bonding for improvements and/or maintenance.

The following landowners have been notified:

Timothy D. Peterson	Stefan Greger	Squaw Creek Partnership
Barbara M. Petersen	Diane C. Greger	
Kenneth D. Hayes	Alex V. Hamilton	Jerrilyn K. Scheytt
	Debra L. Hamilton	Gregory P. Scheytt
William Angove	Catherine M. Matthews	Russell K. Reed
Mary Lou Angove	Janet F. Matthews	
Bob Chapeski		

Greg Martinsen stated the Macintosh Manor subdivision was created many years ago and it has County road right-of-ways within its boundaries. There is a stretch of road in-between Macintosh Manor and the old Bitterroot/Bannack Road that is a private roadway. To provide legal access, several of the landowners would like that portion made a County road so that the County right-of-way goes all the way from Old U.S. Highway 93 to Queen Anne’s Lane. The distance is approximately 2,116 feet. For the record, he stated that he owns property affected by this petition and he is in support of the petition. John and Cindy Mandell could not be present today, but provided a letter in support of the petition.

Colleen Dowdall stated the standard for review is whether it serves the public interest to create this right-of-way.

Mike Sehestedt asked Greg Martinsen what physically exists in this location.

Greg Martinsen stated there is an existing 60 foot wide private access and public utility easement and physically, there is a dirt road.

Mike Sehestedt asked if the road served just those who front on it or if others use it as well.

Greg Martinsen stated there are 11 properties that front on this stretch of road and there are a total of 85 ownerships that have access over this road to their properties.

Mike Sehestedt asked if this was the only access to those properties.

Greg Martinsen stated there was no other constructed access.

Mike Sehestedt asked how long the road had been in use.

Greg Martinsen stated the road has been used for approximately 27 years.

Chairman Evans asked if there was land that could be developed beyond this road that would increase the traffic in the future.

Greg Martinsen stated that was correct.

Chairman Evans opened the public hearing.

Robert Vacek, 15910 Dundee Road, stated he purchased his property in 1993 and built in 1995. All that time they thought they had legal access. However, they recently decided to subdivide and found out that the legal access goes through Mrs. Maclay's barn and a cow field. It would take a lot of money to develop a road from Highway 93 according to the legal access designated. Rowan Road already exists. The treasurer of the Homeowners Association assured him there was legal access. The County informed him that they do not technically have legal access. That 2,100 feet of road in question would deny their right to subdivide or sell their property in the future. The road is bordered by 11 residences. It would seem a liability issue for those homeowners if there was an accident in front of their home. Maintenance is also an issue, as is being able to sell a home in the future. Those would all be good motivation to support the petition. There are some people on Rowan Road that complain about the dust but there are ways to take care of that.

Jane Stoll, 6720 Rowan Street, stated she is requesting the Board's thoughtful consideration in making Rowan Street a dedicated County road. She was surprised to learn that Macintosh Manor residents don't have legal access to their property. It is important to have legal access, it will preserve property values and allow marketability. There was some talk in the neighborhood a few years ago that access to Rowan Street was refused to Tom Maclay when he was developing south of the neighborhood. They wanted Mr. Maclay to meet certain demands before they would let him pass. Instead, another road was built to his subdivision, taking the issue off the table. All the residents need to have the protection of legal access to their property. She asked that the Board consider this petition favorable.

Jim Schmautz, 16190 Highland Drive, stated that he has owned his property for 21 years. There are only a few people left who have owned their property that long. He has never been denied access. However, things don't happen today the way they did 21 years ago. As more and more people from other parts of the country move into the area, their attitudes and beliefs about property ownership change. In his understanding when this property was created in about 1910, there was a notation on the plat map that access was allowed to the properties beyond the section in question. If that was ruled illegal by the Supreme Court, that removed any legal access. In order for any transaction to be legal, it has to be specifically written down and recorded for the properties affected. There is nothing on those 10 or 11 pieces of property that states that he has legal access across them. He uses the road morning and evening and no one has ever stopped him. However, the turnover rate of ownership is high. Some of the homes have turned over 5 or 6 times in 20 years. He does not want to revisit this issue every year or two. When he decides to sell his house, he does not want to have to sue 10 or 11 people to get legal access so a bank will lend the prospective buyer money. If it was the intent of the developer of this property that those beyond it had legal access, then the simplest answer is for the County to accept the road. Those property owners could sign a statement to be filed against the deeds, but they cannot agree as to what should be done. If the County accepts the road, the issue is done.

Mike Dwyer, 16090 Dundee Road, stated that he reiterated what everyone else has said about the road. It would be a really good idea for everyone to have legal access to their property. There are 81 properties and none of them actually have legal access; that is trouble waiting to happen. It is unclear if emergency services or other essential services have a legal right to use the road. There is no downside to granting this petition. There is legal access at the beginning of this road and at the end of this road, but not in the middle. This seems like a low cost, easy fix to the situation.

Chairman Evans asked Mr. Dwyer if it was stated that he had legal access to his property when he purchased it.

Mike Sehestedt stated there is dedicated but unbuilt access that runs down through Helena Maclay's property, basically through the barn. It is unbuilt and physically would require a lot of effort to build it. Insofar as a title policy is concerned, there is legal access of record. Also, given the history of use, a prescriptive right to use the road could be established, but it would require litigation against 10 or 11 homeowners.

Colleen Dowdall stated that Supreme Court decisions have clarified the effect of showing private easements on Certificates of Survey. Those interpretations have made it more clear that this does not provide legal access beyond the location of the private easement.

Mike Sehestedt stated that showing the easement on a Certificate of Survey doesn't establish who is entitled to use the easement. There is nothing recorded that ever granted the properties beyond the private easement the right to use the easement.

Bill McKinley, 16440 Penny Lane, stated he would have no other access out from his property is he could not use this section of the road. There are quite a few other houses in the same condition. He is in favor of granting the right-of-way.

Lee Vandeburgh, 16545 Dundee Road, stated he just purchased his property about six months ago. He was led to believe he had legal access to his property. He found out that technically he does, but that road doesn't actually exist. The title



company says he has legal access and that is correct. The title companies may not have known the whole situation but they are becoming aware of it. His biggest concern, if he were to sell his property, is to say he has legal access without going through a bunch of hoops. Granting this petition is a real simple solution, it would be better for everybody.

Gerald and Judy Johnson, 16125 Queen Anne's Lane, stated that they need Rowan Street to access their property. They would like the Commissioners to grant this petition so they have legal access. Mrs. Johnson stated that legal access through Helena Maclay's property exists on paper. The situation seems ridiculous and there is no need for it.

Steve Stoll, 6720 Rowan Road (Street), stated that there is also a safety issue. He has lived on his property since 1995. The school bus at the bottom of the road is a major issue. A number of children have to walk a mile and a half up the hill. If there is County access, the bus may be able to go to Queen Anne's Lane to eliminate the traffic problem and improve safety for the children.

Frank Hines, 16516 Folsom Road, stated that Macintosh Manor is a beautiful place, but it has one major defect, called "the gap," which is the 2,100 feet of Rowan Road in-between County rights-of-way. It makes a lot of sense to give people legal access to their properties. It is a simple solution that only costs \$75. The road doesn't have to be improved or developed, but everyone will have legal access to their property.

Mike Sehestedt stated that the procedure for this process includes a site inspection followed by a report back to the Commissioners, then the Board can make a decision.

Bill Angove stated he lived on the section of road being referred to. His basic concern against this petition is that the reason this is being done is to allow people to split their property. He understood that for them to do that, they have to have legal access to their property. He would not deny that to anybody. However, they are concerned that the road is going to become a drag strip. Macintosh Manor has a 15 mph speed limit and no one ever goes that slow. The dust is terrible. In order to subdivide property, the road has to be oiled and who would assume the cost of that, those living there or those using the road for access to other properties. He has only lived there for a year and has no intention of moving, but the dust is a real problem. If the road is turned over to the County, will the County maintain the road. The road is never sanded. None of those petitioning for this have come to the residents affected to discuss the situation. It seemed to be done underhandedly.

Jeff Miklautsch, 16200 Folsom Road, stated that he is undecided about the petition. The legal access issue is very important for property values. As mentioned earlier, Tom Maclay was going to tie into the existing County road so he did not have to build any roads or have any traffic going past his house. Helena Maclay's land is plotted for 10 acre lots. Theoretically, they could tie into the existing road system and not have any traffic past their homes. If all of the lots get developed and no further roads are built and all the traffic goes down Rowan Road, that overburdens the road even more than it already is. They don't need another subdivision accessing their road.

Diane Greger stated that the notice for the public hearing shows the reason for the request is that Rowan Street would be eligible to utilize public funding and bonding for improvements and/or maintenance. Rowan Road is being maintained through Homeowners Association dues currently. The only way for the County to maintain and improve the road would be through an RSID which means more taxes and she is not in favor of that. The Homeowners Association does a good job of maintaining the road. There are others ways to obtain legal access without making Rowan Road a County road. She would like to know the process for an unlimited easement. The road would remain a private road, there would be legal access and maintenance of the road would remain with the Homeowners Association. There have previously been discussions about dedicating the road to the County. Does the County really want another road to maintain and improve; they are not able to keep up with the roads they have now. The situation on the whole road needs to be considered, problems with drainage and washouts during thaws and rains, which would then fall on the County. Added traffic from further subdivisions would be a big problem and place an additional strain on Highway 93.

Debbie Hamilton, 16355 Queen Anne's Lane, stated she has lived in the area for 20 years. She was never aware of a problem with legal access, she has never denied anybody access. The dust is awful and more development will only make it worse. The traffic onto Highway 93 would be more of a hazard than it is now. There needs to be more understanding of the problems before the road is given to the County. She is opposed to the petition.

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

Mike Sehestedt stated that a site inspection by a Commissioner and the Public Works Director is required. At the time set for reconvening the hearing, a report will be given to the Board and any additional comments may be presented. The Board will make their decision after that, which could be approval of the petition, denial of the petition or approval of the petition subject to certain conditions.

Commissioner Curtiss stated that an unlimited easement was mentioned, what would that mean.

Colleen Dowdall stated that "unlimited" would mean that everyone in the subdivision above this section of the road and in the area could use the road, but that the road would not be under County control. A private easement can be drafted to include whoever and whatever is wanted. If it is a County road, it is open to the public.

Greg Robertson stated that he would not be interested in inheriting a road that does not meet County standards. He would not be opposed if the road were brought up to County standards, typically done through a Rural Special Improvement District (RSID). There may be another way to address the concerns of those who need legitimate legal access, without going through the public road process. He would like to consult with the County Attorney on those options as an alternative to this process.

Chairman Evans stated that people felt there would be no downside if this is accepted as a County road, and asked for an explanation about potential liability.

Mike Sehestedt stated that the County stands as any other party and if they have a duty, it must be exercised. The duty is reasonable care under these circumstances. If the County accepts this road which serves 80-90 homes, it would have to exercise reasonable care by bringing it to, or seeing that it is brought to, County standards. There are a couple of ways to do that; one is to have the general taxpayers pick up the cost out of the road fund. That is not generally done. Typically, what has been done in the past is require it to be brought to County standards by those who benefit. An RSID is the most common alternative. If an RSID were created to improve this road, the assessment area would be all who benefit from this segment of the road, not just the properties fronting on it. The question of whether it should be a County road, or a County road if it is brought to County standards, is a policy decision for the Board.

Commissioner Curtiss stated that the interest of the public on those 81 lots that don't have legal access needs to be considered. The right-of-way can be accepted without maintenance, so legal access exists but the Homeowners Association would still be responsible for maintenance.

Mike Sehestedt stated that could be done but there would be exposure knowing that the road is substandard. Several people have mentioned how bad the dust is and complaints would come to the County instead of the Homeowners Association. Right now, all of the people in the area have legal access and physical access. The problem is that legal access and physical access don't coincide. Legal access goes over a hill and through a barn and physical access goes over property to which there is only a prescriptive right.

Robert Vacek stated that 95% of the road is already County road, except for the gap that cuts the rest of the road off. In essence, anyone who complains about dust above or below the gap does so to the County.

Mike Sehestedt stated that the County could accept the last piece of responsibility but should do so only by addressing road improvements. Issues include dust, safety, etc., others could surface during the site inspection. According to testimony, it is a dirt road that washes out some, driven at a high rate of speed generating lots of dust. It creates liability issues for the County if this piece is simply accepted. It may solve a legal issue for lots of people and may be in the public interest to accept it, but there is a downside to the County concerning liability.

Robert Vacek stated that whether the gap becomes a County road or not makes no difference to him, but being able to sell his home or subdivide his land because of it, does make a difference. If this can be done so that legal access can be obtained in the gap, that would be acceptable.

Mike Sehestedt stated that if all the people that owned property on the gap joined in granting an easement in favor of all of the people that live above the gap, that granted easement would provide legal access. It is difficult to get everybody together on an issue like this, which is why the petition was brought forward. To get 22 people to sign and record an easement in favor of everybody else at the top becomes record of legal access.

Commissioner Curtiss stated that there are letters from three of the property owners who oppose making this a public road.

Mike Sehestedt stated that access could be granted by these people. How that access would be conditioned would probably initiate a dispute.

Robert Vacek stated that he and Mr. Schmautz have talked with some of the property owners. Having an easement granted is probably not going to happen.

Colleen Dowdall stated that when this was first brought to her attention and discussed at a neighborhood meeting, all of the alternatives that could be considered were explored. A detailed letter was sent to all of the landowners in the area that explored all of those options – dedicating right-of-way, granting private easement, suing for prescriptive easement, petitioning for a public road. The result of that letter was the petition before the Board today, which was favored because it solves the legal and physical access and is connected to County roads. In her opinion, the County portions of this road are at least as scary as the private portion of the road. Regardless of the Board's action, there is a problem with this County road. If the connection is made, the ability to do something may present itself or it may be a requirement to do something. She felt the petition process was the best solution for providing access for everyone.

Jim Schmautz stated that in about 1910 when these initial easements were granted, they were done in accordance with the rules and regulations in place at that time. Since then, they have been ruled unconstitutional. The developer granted easements with good intentions which suddenly became null and void. It would seem that the County has some responsibility to correct the void that now exists. The homeowners fronting on the gap are not going to agree on a written, recorded easement, without trying to stop any future subdivision above them. He has a considerable investment in his home and property at the mercy of those homeowners. It puts a lot of control in the hands of a few people. The County should have some responsibility for cleaning this up.

Commissioner Curtiss asked if the original Macintosh Estates was part of the property that Helena Maclay now owns.

Jim Schmautz stated that he did not really know, the situation is confusing. He has heard at least half a dozen stories on this road issue of who owns what, who has responsibility, how it got to where it is today. When the neighborhood meeting was held, it was explained that the County has all of the road except for this 2,100 feet. Initially, they were told the County only had the north and south roads and that everything else was privately owned. A lot of those who front on this portion of the road don't want others to divide their land.

Greg Martinsen stated the Maclays own numerous lots in the northern end of the old Macintosh Manor. It just happens that one of the roads comes off Manor Boulevard and attaches to the north/south streets. That happens to run through the Maclay property which has a very steep grade, worse than most of the other roads in the subdivision. He asked how many miles of roads there are in Missoula County.

Greg Robertson stated that there were about 1,500 miles of roads in Missoula County.

Greg Martinsen asked how many miles were County maintained.

Greg Robertson stated that about 800 miles were County maintained, the balance are either public or private.

Chairman Evans asked the point of Mr. Martinsen's questions.

Greg Martinsen asked how many times the County had been sued over the roadways.

Chairman Evans stated that it was more than they liked.

Greg Martinsen asked how many suits were successful.

Mike Sehestedt stated an example of an obstructed intersection with a yield sign. A child on a bicycle didn't yield and was hit by a truck, that cost the County about \$600,000.

Greg Robertson stated there is a suit in progress right now worth about \$750,000.

Commissioner Carey stated when he first took office, he had to deal with a suit from a man who was paralyzed and claimed it was because the County hadn't installed a proper sign. That was settled for around \$400,000. He asked if there had been any investigation into what an RSID might cost. Landowners want a cleaner, dust free, better road with legal access.

Greg Martinsen stated that 16 or 17 years ago, the Homeowners Association asked him to come to a meeting as he has done a lot of survey work and owns property in the area. At that time they asked if there was a way the County would take over the road. He spoke with Horace Brown who responded with a letter that said if the residents brought it up to gravel standards, the County would accept the right-of-way. The homeowners decided they didn't want to spend the money to bring it to gravel standards. This issue has gone back and forth for many, many years. All the people want is access to their property that protects their title and value. He planned to dedicate his portion of the road to the County.

Commissioner Carey asked what it would take to bring 2,100 feet of road to County standards.

Greg Robertson stated it would depend on a lot of factors, existing geometrics, vertical and horizontal alignment, etc. Generally the cost associated for bringing a road to standards is \$400,000 to \$600,000 per mile, paved. That is assuming a fair amount of earth work, which may not be needed in this case. He had a similar situation recently on about 1,600 feet where the road bed was present and just needed rock and gravel which cost around \$40,000. It depends on the stability of the road bed and what needs to be done.

Nick Kaufman stated he has worked on some subdivisions in this area and is also a property owner on Snowdrift Lane. Snowdrift Lane had a similar situation, it is a private access easement and residents wanted to upgrade the road. They did the same thing that Greg is proposing, petition for a County road in conjunction with an RSID. The road was paved to 24 feet in width with 2 foot shoulders. The subgrade was very poor, much more so than on Rowan Street. The zoning is one dwelling unit per five acres so the opportunity to subdivide further wasn't available. Petitioning for a County road and doing the RSID was successful; his fee for 5 acres was approximately \$5,000. There is a solution here that is financially feasible for the residents. Snowdrift Lane is exactly one mile or 5,280 feet.

Mike Sehestedt asked the total cost of the Snowdrift Lane RSID.

Nick Kaufman stated he did not recall the total cost. It was expensive because fabric had to be brought in to overcome the structural characteristics of the subgrade, covered by a lot of rock, then cushion, then asphalt. The residents were able to afford it with far fewer than 81 homes and twice as much road.

Chairman Evans stated that the figure for an RSID does not have to be paid in one year unless the homeowner chooses to do so. The cost is usually spread over many years.

Commissioner Curtiss stated that the road inspection would be scheduled. It is important to look at this from a transportation perspective as well as legal access.

Chairman Evans stated that the Board would receive a report from the site inspection and further discuss this issue at the Public Meeting next Wednesday, February 4, 2004.

**Consideration: Ondrak Addition (2 lots on 10 acres) – off Windemere in Big Flat**

Jackie Corday, Office of Planning and Grants, presented the staff report.

This is a request from Greg and Cindy Ondrak, represented by Nick Kaufman of WGM Group, Inc., to subdivide a 10.30 acre parcel into two lots. The property is located off Windemere Drive off Big Flat Road. The property is currently pasture land, fairly flat with no riparian areas.

It is zoned C-A3 (Residential) which allows one dwelling unit per five acres. The Comprehensive Plan designation is Rural Residential with a recommended density of one dwelling unit per five to ten acres. The proposal is in compliance with both zoning and the Comprehensive Plan.

Two variances are being requested. Windemere Drive is an 18 foot wide paved road within a 60 foot wide private access easement. The standards require a paved road width of 24 feet. Both OPG and Public Works support the variance request because public safety would not be increased by widening just that section of the road that front on the property. The road is maintained by the Windemere Homeowners Association.

The second variance is from pedestrian facilities. The subdivision is outside the Urban Growth Area and on a private road, so the requirement is for internal pedestrian connections. Again, OPG and Public Works support approval of the

variance request because there are no pedestrian facilities in the area as it is still a relatively quiet, rural area. Most of the homes are on 5 acre to 20 acre parcels.

There are six conditions of approval, most of them standard conditions required on small subdivisions. There is no opposition to any of the conditions. Condition 1 requires plans for installation of fire sprinkler systems to be approved by the Missoula Rural Fire District. Condition 2 is for an RSID/SID waiver statement on the plat for public water for fire fighting purposes. There is already an RSID/SID waiver statement on the plat for improvements to Big Flat Road.

Conditions 3 and 4 are revisions to the covenants for address signs and high radon potential. Condition 5 addresses a Revegetation Plan for disturbed sites. Condition 6 address Living with Wildlife issues in the covenants.

Chairman Evans asked for public comments. There were none.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Section 3-2(1)(I) of the Missoula County Subdivision Regulations to allow Windemere Drive to vary from the required 24 foot road width, based on the findings of fact contained in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Section 3-2(8)(A)(vi) of the Missoula County Subdivision Regulations to not provide internal pedestrian connections, based on the findings of fact in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the Ondrak Addition Subdivision, 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.

#### **Ondrak Addition Subdivision Conditions of Approval:**

##### **Fire Protection and Public Health**

1. Prior to Zoning Compliance Permit issuance, plans for installation of a residential fire sprinkler system shall be approved by the Missoula Rural Fire District. *Subdivision Regulations Article 3-7(1)(E) and OPG recommendation.*
2. A waiver of the right to protest a future RSID/SID for public water for fire fighting purposes shall be included on the final plat. *Subdivision Regulations Article 3-7(2).*
3. The Ondrak Addition development covenants shall be amended prior to final plat approval by adding the following language: "Each residence must install an address sign at least six inches in height made of a reflective material that is clearly visible from the street." *Subdivision Regulations Article 3-1(1)(B) and Missoula Rural Fire District recommendation.*
4. The Ondrak Addition development covenants shall be amended prior to final plat approval to include the following statement: "EPA has designated Missoula County as having a high radon potential (Zone 1). All residences should incorporate passive radon mitigation systems into the design." *Subdivision Regulations Article 3-1(1)(D), City-County Health Department and OPG recommendation.*

##### **Wildlife and Weeds**

5. A Revegetation Plan for disturbed sites shall be submitted to and approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B), County Weed District and OPG recommendation.*
6. The Ondrak Addition development covenants shall be amended prior to final plat approval by adding the following language:

**Living with Wildlife** – Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, bears, skunks and raccoons. Contact the Montana Fish, Wildlife and Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife."

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- a. There is the potential for **vegetation damage by wildlife**, particularly from deer feeding on green lawns, gardens, flowers, shrubs and trees in this subdivision. Homeowners should be aware of this potential damage and be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b. **Do not feed wildlife** or offer supplements (such as salt blocks), attractants or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against State law (MCA 87-3-130) to provide supplemental feed attractants if it results in a "concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners should be aware that deer might occasionally attract mountain lions to the area.

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- c. **Pets** should be confined to the house, in a fenced yard or in an outdoor kennel area and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current State law it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-123).
- d. **Garbage** should be stored in secure bear-resistant containers or indoors to avoid attracting animals such as bears, raccoons, dogs, etc.
- e. **Pet food and livestock feed** must be stored indoors or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, etc.
- f. When **feeding pets or livestock**, do not leave food out overnight. Feed pets indoors so that wild animals do not learn to associate food with your home.
- g. **Barbecue grills** should be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on the grill, lid, etc., can attract bears and other wildlife.
- h. **Boundary fencing** should be no higher than 3.5 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence.
- i. **Gardens** can attract wildlife. Keep the produce picked because rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller and extend about 1 foot below ground level. Netting over gardens can help deter birds from eating berries.
- j. **Fruit trees or orchards** can attract wildlife such as deer and bears. Keep ripe fruit picked and do not allow rotten fruit to collect under trees. Consider fencing to keep deer out.
- k. **Bird feeders** attract bears. Consider not using them in this area between the months of April through October. If used, bird feeders must: a) be suspended a minimum of 20 feet above ground level; b) be at least 4 feet from any support poles or points; and c) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- l. **Compost piles** can attract skunks and bears and should be avoided in this subdivision. If used, they should be kept indoors or built to be wildlife-resistant.
- m. **Apiaries (bee hives)** could attract bears in this area and should be avoided. (Please consult Montana Fish, Wildlife and Parks or the U.S. Fish and Wildlife Service for help in planning and constructing an apiary system that will help deter bears). *Subdivision Regulations Article 3-1(2), 3-1(10) and OPG recommendation.*

**Consideration: Holden Addition (5 lot minor subdivision) – one mile west of Clinton on East Mullan Road**

Tim Worley, Office of Planning and Grants, presented the staff report.

John Holden, represented by John Kellogg of PCI, is requesting approval of Holden Addition, a proposal to divide 8.34 acres into five lots. The property is located approximately one mile west of the Clinton exit from Interstate 90, on East Mullan Road. All five lots will be located adjacent to the south side of East Mullan Road.

The property is unzoned. The Comprehensive Plan recommends a residential density of two dwelling units per acre. This development will result in a density of 1 dwelling unit per 1.67 acres, making it slightly less dense than what is recommended by the Comprehensive Plan.

There is one irrigation ditch that crosses all five lots. The intention is for the ditch to be used following subdivision. Therefore, staff recommends an irrigation-related condition that would ensure access to irrigation water. This condition also gives the landowner the option to sever water rights or notify the landowners that they may continue to be assessed for irrigation water even though that water may not be deliverable.

East Mullan Road meets County standards in this location, with the exception of walkways. Therefore the subdivider requested a variance from providing walkways. Erik Dickson, Public Works, supports the variance request because there are no facilities of this nature in the area. There is no interior access road for these five lots because they will all front on East Mullan Road. Shared driveways are planned for four of the five lots.

The Clinton Rural Fire District serves the property. The fire station is located within approximately 2 miles. The fire protection afforded by Clinton Rural Fire includes two watertenders, each with more than 1,500 gallons of water. The Assistant Fire Chief of Clinton Rural Fire feels there is adequate equipment to provide fire protection for this location. Staff does recommend one condition related to fire protection; that is that any driveways in excess of 150 feet in length be reviewed by Clinton Rural Fire.

The proposed development sits on a high terrace above the Clark Fork River, outside of any FEMA designated floodplain. It is generally open and grassy but there is some woody vegetation at a break in slope on the property. There is a condition recommended by Bill Otten, Missoula County Weed District, in relation to weed control on the property. The Department of Fish, Wildlife and Parks feels that because of the rural location and the woody break in slope, that Living with Wildlife information should be provided to the landowners. Staff recommends that information be included as a condition of approval. There is a fairly steep break in slope on the southern portion of the property that has been designated a No Build Zone. The No Build Zone continues from this break in slope all the way to the southern edge of the property on four of the five lots. There is a small portion of a Bonneville Power Administration easement that covers the southern 30 feet of four of the five lots.

The standard condition addressing potential radon problems has been recommended by staff. In conclusion, staff recommends approval of the Holden Addition.

Commissioner Curtiss stated that some subdivisions are required to contribute to the large diameter hose fund for the rural fire district, but it is not being requested on this subdivision.

Tim Worley stated that the Clinton Rural Fire District did not specifically comment in relation to the large diameter hose fund. In a conversation with the Assistant Fire Chief, he said that since this subdivision was within 2 miles of the fire station and they have 2 watertenders and 2 fire trucks with 750 gallon capacity, that would be sufficient for fire protection. There is also a well at the Clinton station used to refill the watertenders and fire engines.

Colleen Dowdall stated that usually Missoula Rural Fire required a donation to their large diameter hose fund. It is not a part of the subdivision regulations.

John Kellogg, Professional Consultants, Inc., developer's representative, stated that Mr. and Mrs. Holden were present as was Pat Burn, who also represents them. They were available to answer any questions the Board may have. The Holdens have reviewed the proposal and are in agreement with the recommended conditions. The Holdens intend to offer irrigation water to each of the property owners through a method similar to what has been used in the past, pumping water from the ditch. The large diameter hose used by some rural fire districts is different than what is used by the Clinton Rural Fire District.

Chairman Evans asked for public comments. There were none.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Article 3-2(8)(A)(iii) of the Missoula County Subdivision Regulations to not provide a system of pedestrian/bicycle circulation for the subdivision, based on the findings of fact set forth in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

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

#### **Holden Addition Subdivision Conditions of Approval:**

##### **Fire**

1. A development agreement shall be filed with the Missoula 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 state that driveways in excess of 150 feet in length shall have approved turnarounds for fire apparatus within 150 feet of the building and shall have an unobstructed width of not less than 20 feet and an unobstructed vertical clearance of 13 feet, 6 inches and that final designs shall be approved by the Clinton Rural Fire District. *Subdivision Regulations Article 3-2(10)(E) and OPG recommendation.*

##### **Weeds**

2. A development agreement shall be filed with the Missoula 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 state: "Lot owners shall maintain their lots in compliance with the Montana County Weed Control Act and the Missoula County Noxious Weed Management Plan. Any ground disturbance created by maintenance or construction shall be revegetated with beneficial species at the first appropriate opportunity after maintenance or construction is complete." *Missoula County Weed District recommendation.*

##### **Radon**

3. A development agreement shall be filed with the Missoula Clerk and Recorder's Office prior to final plat approval advising property owners of the Health Department recommendation that all new construction incorporate passive radon mitigation systems. The language of the provision shall be subject to review and approval by OPG prior to final plat approval. *City-County Health Department recommendation.*

##### **Irrigation**

4. The subdivider shall ensure that all lot owners have access to irrigation water or have the water rights removed for Lots 1-5 through an appropriate legal or administrative process, which shall be indicated by a statement on the final plat, or a development agreement shall be filed prior to final plat approval that includes notification that the land is classified as irrigated and may continue to be assessed for irrigation water delivery even though the water may not be deliverable, subject to review and approval by the County Attorney's Office, prior to final plat approval. *MCA 76-3-504(i), MCA 76-3-504(j), Subdivision Regulations Article 4-1(13), County Attorney's Office and OPG recommendation.*

##### **Living with Wildlife**

5. A development agreement shall be filed with the Missoula 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 language:

**Living with Wildlife** – Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, bears, skunks and raccoons. Contact the Montana Fish, Wildlife and Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife."

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

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- a. There is the potential for **vegetation damage by wildlife**, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be aware of this potential damage. They should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Homeowners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b. **Do not feed wildlife** or offer supplements (such as salt blocks), attractants or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against State law (MCA 87-3-130) to provide supplemental feed attractants if it results in a "concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners should be aware that deer might occasionally attract mountain lions to the area.
- c. **Pets** should be confined to the house, in a fenced yard or in an outdoor kennel area and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current State law it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-123).
- d. **Garbage** should be stored in secure bear-resistant containers or indoors to avoid attracting animals such as bears, raccoons, dogs, etc. It is best not to set garbage cans out until the morning of garbage pickup.
- e. **Pet food and livestock feed** must be stored indoors or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, etc. When feeding pets or livestock, do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
- f. **Barbecue grills** should be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on the grill, lid, etc., can attract bears and other wildlife.
- g. Consider **boundary fencing** that is no higher than 3.5 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence.
- h. **Gardens** can attract wildlife. Keep the produce picked because rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
- i. **Fruit trees or orchards** can attract wildlife such as deer and bears. Keep ripe fruit picked and do not allow rotten fruit to collect under trees. Consider fencing to keep deer out.
- j. **Bird feeders** attract bears. Consider not using them in this area between the months of April through October. If used, bird feeders must: a) be suspended a minimum of 20 feet above ground level; b) be at least 4 feet from any support poles or points; and c) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- k. **Compost piles** can attract skunks and bears and should be avoided in this subdivision. If used, they should be kept indoors or built to be wildlife-resistant. *Subdivision Regulations Article 3-1(2), 3-1(10) and FWP recommendation.*

**Consideration: H & M Addition (2 lots on 2.38 acres) – 2818 West Central**

Monte Sipe, Office of Planning and Grants, presented the staff report.

Robert Hayler and Lewis Matelich are requesting approval to create H & M Addition, a 2 lot subdivision, with lots ranging in size from 1.38 acres to 1 acre. Staff is recommending approval of the H & M Addition with 7 conditions of approval. The property is located on the north side of West Central Avenue, approximately three blocks west of Reserve Street and approximately three blocks east of Big Sky High School.

Two errors were identified in the staff report. Those corrections are as follows: 1) The legal description for the property contained in the Executive Summary states the property is located in Section 25. The proper legal description should be Section 30; and 2) Condition 3 references Attachment A of the staff report. This condition should reference Attachment C.

The property is zoned ZD 12A, a Citizen Initiated Zoning District established in 1974. The maximum residential density for this zoning district is 2 dwelling units per acre with a minimum lot size of one-half acre. The 1998 Missoula Urban Comprehensive Plan Update designates the property as Suburban Residential with a recommended density of 2 dwelling units per acre. Setback requirements for the ZD 12A zoning district are 25 feet for front and rear yards and 15 feet for side yards.

Central Avenue and a private driveway will provide access to the proposed lots. Central Avenue is a 24 foot wide paved road within a 60 foot public right-of-way easement. Subdivision Regulations require local roads serving 3-80 dwellings in the Urban Growth Area to have a 26 foot pavement width. The applicant has requested a variance to the requirement for the additional pavement width on Central Avenue. Staff is recommending approval of this variance request. Public Works supports the variance request.

The private driveway to access Lot 2 is proposed as a 12 foot wide driveway within a 30 foot private access and public utility easement across Lot 1. The first 20 feet will be paved. Staff is recommending a condition that the driveway plans be reviewed and approved by Public Works and the Missoula Rural Fire District prior to final plat approval.



This subdivision is located within the Urban Growth Area where urban levels of development are suitable over the longer term. The subdivision should allow flexibility for future development. Subdivision Regulations state the circulation pattern for the subdivision shall be designed to function in a logical manner and accommodate the circulation demands of the proposed development, adjacent land uses, parcels of land in the immediate area and area-wide transportation plans. The parcels of land to the north, east and west are currently tract land varying in size from 2.09 acres to 4.67 acres with one single family dwelling on each. These properties are zoned ZD 12A, the same zoning as the parcel proposed for subdivision. This zoning district allows numerous uses including one and two family dwellings, colleges, community halls, libraries, fire stations, schools, temples and other uses. The eastern property line of this tract of land is located at the location where a north/south road connection (28th Avenue) would create a block pattern consistent with what has occurred to the east. Staff is recommending conditions of approval for conditional access easements and no build setback areas to accommodate road connections with appropriate setbacks for future subdivision of lots.

During discussions on the project, it was determined that a variance was necessary to Missoula County Subdivision Regulations Article 3-3(1)(D)(iii). Additional findings of fact and conclusions of law to support conditional approval are included on a separate memo dated January 27, 2004. Subdivision Regulations require each lot to abut and have access to a public or private street or road. Lot 2 does not meet this requirement, thus a variance is necessary. Staff is recommending conditional approval of the variance. Conditional access easements are being recommended. Once either right-of-way is needed, the requirement for the variance will be eliminated.

Subdivision Regulations require curb and gutter on Central Avenue because the average lot frontage is less than 175 feet. The applicant has requested a variance to this requirement. Staff is recommending approval of this variance request. Public Works supports the variance request. Subdivision Regulations also require the installation of pedestrian facilities on Central Avenue. The applicant has requested a variance to this requirement. Staff is recommending approval of this variance request. Public Works supports the variance request. There are no curb and gutter or sidewalks in the immediate area that could be connected to. Those facilities terminate just past C.S. Porter Middle School.

Staff has also recommended a condition for a waiver of the right to protest an RSID/SID for improvements to Central Avenue, including paving and road widening, curb and gutter and pedestrian facilities in relation to the variance requests.

Bob Hayler, 2818 West Central Avenue, stated he was doing this subdivision to construct a personal residence on an additional lot to the north. He is representing himself to help defray costs. The process has been a learning experience. The Office of Planning and Grants has been helpful throughout the process. His only complaint was regarding Ray Tipp, who the Board is familiar with.

Commissioner Curtiss asked if Mr. Hayler was in agreement with the additional conditions recommended by staff.

Bob Hayler stated he had received copies of all pertinent documents and had no problem with them.

Chairman Evans asked for public comments. There were none.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Article 3-2(3) of the Missoula County Subdivision Regulations to not provide a 26 foot pavement width for West Central Avenue, based on the findings of fact set forth in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Article 3-2(7)(B)(i) of the Missoula County Subdivision Regulations to not provide curb and gutter on West Central Avenue with lot frontage of less than 175 feet, based on the findings of fact set forth in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Article 3-2(8)(A)(ii) of the Missoula County Subdivision Regulations to not provide concrete boulevard sidewalks/pedestrian walkways for subdivisions inside the Urban Growth Area served by public road, based on the findings of fact set forth in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners incorporate and approve the actions as noted on the memo dated January 27, 2004 from Monte Sipe.

Commissioner Curtiss stated that the memo contained an additional variance to Missoula County Subdivision Regulations Article 3-3(1)(D)(iii) that requires each lot to abut on and have access to a public or private street or road and correction of two errors identified in the staff report.

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

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

#### **H & M Addition Summary Subdivision Conditions of Approval:**

##### **Roads/Driveways**

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

"Acceptance of a deed for a lot within this subdivision shall constitute the assent of the lot owner to waive the right to protest a future RSID/SID, based on benefit, for upgrades to West Central Avenue, including, but not limited to, paving, curbs and gutters, non-motorized facilities, street widening and drainage facilities. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land depicted herein." *Subdivision Regulations Article 3-2 and County Surveyor recommendation.*

2. Driveways plans with appropriate turnarounds shall be reviewed and approved by Public Works and the Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-2(10) and OPG recommendation.*

**Conditional Access Easements/No Build Zones**

3. 30 foot conditional public access and utility easements shall be shown on the final plat in conformance with locations shown on Attachment C of the staff report, subject to review and approval of OPG and County Public Works, prior to final plat approval. *Subdivision Regulations Article 3-1(7), 3-2(1)(E) and OPG recommendation.*

4. The following statement shall appear on the face of the plat and refer to the conditional public access and utility easements:

"The owners dedicate 30 foot rights-of-way for purposes of public roadways and utilities over and across the lots as shown on the subdivision plat, conditioned upon rights-of-way being used as roadways at the time they are needed to serve future subdivision within the H & M Addition or to parcels to the north or east of the subdivision. The lot owners and future owners of lots in the H & M Addition will not be responsible for the construction of the future roadways if construction is attributable to divisions of land to the north or east or re-subdivision of lots within H & M Addition with another approved access to an existing public road. No structures, permanent improvements or utilities shall be placed within the rights-of-way so as to interfere with their eventual use as public roadways." *Subdivision Regulations Article 3-1(7), 3-2(1)(E) and OPG recommendation.*

5. The final plat shall include two No Build Zones as follows: A 25 foot No Build Zone located in an east/west direction and immediately south of the 30 foot conditional access easement on the north property line of Lot 2 and a 15 foot No Build Zone located in a north/south direction and immediately west of the 30 foot conditional access easement on the east property line of Lot 2. *Subdivision Regulations Article 3-1(7) and OPG recommendation.*

**Weeds**

6. A Revegetation Plan for disturbed sites shall be approved by the Missoula County Weed District prior to final plat approval. Provision for implementation of the Plan shall be included in a restrictive covenant. Additionally, the restrictive covenant shall require lot owners to maintain their lot in compliance with the Montana County Weed Control Act and the Missoula County Noxious Weed Management Plan. This condition is subject to OPG and County Attorney's Office approval and shall be filed with the final plat. *Subdivision Regulations Article 3-1(1)(B) and County Weed District recommendation.*

**Health**

7. A restrictive covenant shall be provided prior to final plat approval to include the following statement: "EPA has designated Missoula County as having a high radon potential (Zone 1). All residences should incorporate passive radon mitigation systems into the design." This condition is subject to OPG and County Attorney's Office approval and shall be filed with the final plat. *Subdivision Regulations Article 3-1(1)(D), City-County Health Department and OPG recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 4:00 p.m.

**THURSDAY, JANUARY 29, 2004**

The Board of County Commissioners met in regular session; all three members were present. Late in the afternoon, Commissioner Carey participated in the "Memorial for the Homeless" held on the Courthouse steps.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated January 28, 2004, with the following grand totals:

- 1) \$27,522.87; and
- 2) \$44,301.54.

The Claims Lists were returned to the Accounting Department.

**ADMINISTRATIVE MEETING**

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

Agreement – The Commissioners signed an Agreement, dated January 12, 2004 between Missoula County and Rocking M Design, P.C. for architectural services relating to the new restroom facility at the Fort Missoula Regional Park. The cost of the project is estimated to be \$16,400. All other terms and conditions are set forth therein. The document was returned to Lisa Moisey, County Parks Coordinator, for further handling.

Other items included:

- 1) Discussions were held regarding the following: a) Mullan Corridor Road Grid System/Surveys; b) DeSmet Interchange Area Speed Zone Investigation; c) Resolution No. 84-049 regarding utilities in public right-of-way; d) creation of El Mar/New Meadows & Golden West Sub-Districts; and e) update on creation of Meadows West RSIDs.

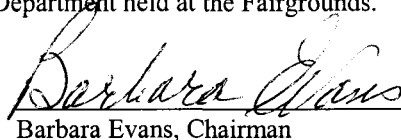
The minutes of the Administrative Meeting are on file in the Commissioners Office.

FRIDAY, JANUARY 30, 2004

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, the Commissioners attended the Economic Outlook Seminar held at the Holiday Inn. That evening, Commissioner Carey attended a retirement party for Don Morman of the Sheriff's Department held at the Fairgrounds.



Vickie M. Zeier  
Clerk & Recorder



Barbara Evans, Chairman  
Board of County Commissioners

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**MONDAY, FEBRUARY 2, 2004**

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, the Commissioners conducted an inspection of the Detention Center.

Site Inspection

Later in the afternoon, Commissioner Carey accompanied Public Works Director Greg Robertson on site inspections of the Hayes Creek Road in the Blue Mountain area and Rowan Street located between Lolo and Florence.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated January 30, 2004, with the following grand totals:

- 1) \$5,786.44; and
- 2) \$1,944.84.

The Claims Lists were returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated February 2, 2004, with a grand total of \$14,955.76. The Claims List was returned to the Accounting Department.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending January 31, 2004.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending January 31, 2004.

SPECIAL ADMINISTRATIVE MEETING

At a Special Administrative Meeting, the following items were signed:

Letter and Proposal – The Commissioners signed a letter, dated February 2, 2004 to the Montana Board of Crime Control, Helena, Montana, enclosing the Missoula County Application #04-14 Juvenile Public Defense: Juvenile Accountability Block Grant proposal, and requesting support for a new initiative to be housed in the Missoula County's Public Defender Office. The project will provide additional training to Public Defenders and staff; will initiate a case management program for Juvenile Public Defense; and will provide for alternative services for youth involved in the project. The Grant requires 10% hard funding, or approximately \$8,000.

**TUESDAY, FEBRUARY 3, 2004**

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Curtiss attended a Mental Health & Chemical Dependency Services Community Meeting held at St. Patrick Hospital.

Claims Lists – Commissioners Curtiss and Evans signed three (3) Claims Lists, dated February 2, 2004, with the following grand totals:

- 1) \$6,877.23;
- 2) \$83,544.78; and
- 3) \$4,232.46.

The Claims Lists were returned to the Accounting Department.

Claims List – Commissioners Curtiss and Evans signed the Claims List, dated February 3, 2004, with a grand total of \$62,730.55. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-019 for the Health Department, reflecting \$800.00 for needed object codes.

Resolution No. 2004-015 – The Commissioners signed Resolution No. 2004-015, dated February 3, 2004, a Budget Amendment for the Clerk of District Court, reflecting a transfer from the Court Education Trust in the amount of \$852.00 for an old bill that the State will not reimburse. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Agreement – The Commissioners signed a Collective Bargaining Agreement between Missoula County and The United Food and Commercial Workers Union (Local #4), Missoula Public Library, for the purpose of promoting and continuing an understanding between the Employer, its employees and the Union, to provide for equitable and peaceful adjustment of differences which may arise, and to establish mutually agreed upon conditions of employment. The term will be July 1, 2003 through June 30, 2005. All terms and conditions are set forth therein. The document was returned to Steve Johnson in Human Resources for further signatures and handling.

Agreement – The Commissioners signed an Agreement between Missoula County and Local Unit Number Two (Nurses) of the Montana Public Employees Association ("MPEA") employed at the Missoula City-County Health Department and the Partnership Health Center, for the purposes of collective bargaining with respect to rates of pay, hours and other conditions of employment. The term will be July 1, 2002 through June 30, 2004. All terms and

conditions are set forth therein. The document was returned to Steve Johnson in Human Resources for further handling.

Resolution No. 2004-011 – The Commissioners signed Resolution No. 2004-011, dated February 3, 2004, a Resolution to accept property from Mr. Bernard and Mrs. Barbara Beeler by an easement for public road and all other public purposes, located in a portion of the NW¼ of Section 25, T 15 N, R 22 W, Missoula County, Montana.

Contract – Chairman Evans signed Contract (#04-332-74409-0) between the Missoula Office of Planning and Grants and the Montana State Department of Public Health and Human Services, Addictive and Mental Disorders Division, for funding in the amount of \$54,545.00 for the Community Incentive Program Enhancement Project. The purpose of this project is to carry out community activities to build infrastructure and capacity for substance abuse prevention programs targeted at children ages 0 through 6 years of age. The term will be October 1, 2003 through September 30, 2004. All other terms and conditions are set forth therein. The document was returned to Peggy Seel in OPG for further handling.

Request for Action – The Commissioners voted and approved a request from Friends to Youth to extend the lease on a tax-deed parcel of land located in Gateway Gardens #2, Lot 2, Missoula County, for another 10 years beginning January 1, 2004. \$10.00 has been received from Friends to Youth (\$1.00 per year).

Other items included:

- 1) The Commissioners considered and approved an Option Agreement (with Release language) with WW Realty for Lots 1 and 2, Block 10, Missoula Industrial Park. The Commissioners will sign the document when it has been drafted and reviewed by Deputy County Attorney Mike Sehestedt.
- 2) The Commissioners declined to pay a bill in the amount of \$900 from the Montana Coalition of Forest Counties for FY 2004 Dues.

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

#### WEDNESDAY, FEBRUARY 4, 2004

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

#### CHIEF ADMINISTRATIVE OFFICER MEETING

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

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-023 for Public Works (Bridge Fund), reflecting \$5,000.00 for additional funds needed for the Maclay Flats and Schwartz Creek Bridge projects.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-025 for the RSID 916 Fund (El Mar), reflecting \$6,000.00 for the repair of the well house in El Mar.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-026 for the RSID 925 Fund (Sunset West), reflecting \$1,000.00 to replace a pump that failed and the purchase of an additional pump.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-027 for the Western Montana Fair, reflecting transfers of \$3,450; and \$462,930 in Expenses and \$775,200 in Revenue to restructure the Fair budget to enhance control and analysis of operations (break out Western Montana Fair and special events from current operations).

Resolution No. 2004-013 – The Commissioners signed Resolution No. 2004-013, dated February 4, 2004, a Budget Amendment for Public Works (Road Fund) in the amount of \$56,200, reflecting cash reserves beyond the 5% requirement. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Resolution No. 2004-014 – The Commissioners signed Resolution No. 2004-014, dated February 4, 2004, a Budget Amendment for RSFD 901 (Lolo) in the amount of \$26,950, reflecting increased costs of testing associated with plant re-certification; payment for mailing costs for mailer sent out by advisory board; and payment for contract for emergency power, VFDs, etc. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

#### PUBLIC MEETING – February 4, 2004

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

#### Pledge of Allegiance

#### Public Comment

None

Routine Administrative Actions

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Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$224,373.60. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Hearing (Certificate of Survey): Linton Family Transfer

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract C-2 of COS 4153, located in the northeast one-quarter of Section 12, Township 14 North, Range 23 West.

Solon B. Linton and Donald J. Linton have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 20 acres in size located near Alberton, Montana. Solon and Donald Linton propose to create one approximately six acre parcel for transfer to Drue B. Linton, Donald's father, for residential purposes and keep the remaining approximately 14 acre parcel for residential purposes as well.

The history of the parcel is as follows: Dennis Hart filed a Notice of Purchasers Interest in September, 1982, COS 113, and purchased Tract C from Gerald Hendrickson. COS 4153 was filed in October, 1992, creating Tract C1 for occasional sale and Tract C2 as a remainder. A warranty deed was filed in December, 1992, deeding Tract C2 to Charles Rettberg. Charles Rettberg deeded Tract C2 to Donald and Solon Linton in September, 1999.

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

Chairman Evans opened the public hearing.

Solon Linton was present and came forward to answer any questions the Board may have.

Commissioner Curtiss stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. She asked Mr. Linton if he was going to transfer this land to his father.

Solon Linton stated that was correct, this is not an attempt to evade subdivision review.

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

Commissioner Curtiss moved that the Board of County Commissioners approve the request by Solon B. Linton and Donald J. Linton to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing (Certificate of Survey): Maier 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 the east one-half of the northwest one-quarter of Section 34, Township 11 North, Range 20 West, excepting Tract A of COS 2110.

Ben and Elsie J. Maier have submitted a request to create two parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 80 acres in size located near Florence, Montana. Ben and Elsie propose to create 2 one-acre parcels for transfer to their daughters, Sandi Boland and Sharon May, for residential purposes and keep the remaining approximately 78 acre parcel for residential purposes as well.

The history of the parcel is as follows: Ben and Elsie Maier purchased this land in 1964. COS 2110 was filed in 1979 for the purpose of relocating common boundary lines between adjoining properties, reducing this parcel by one acre.

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act except as listed below:

COS 2110 Boundary Relocation, September, 1979.

Chairman Evans opened the public hearing.

Ben Maier was present and came forward to answer any questions the Board may have.

Chairman Evans stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. She asked Mr. Maier if he was going to transfer this land to his daughters.

Ben Maier stated that was correct, he was transferring the property to them as a gift. It was not an attempt to evade subdivision review.

There being no comments, the public hearing was closed.

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Commissioner Carey moved that the Board of County Commissioners approve the request by Ben and Elsie J. Maier to create two parcels by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss stated that the applicants would receive a letter of approval within a week or two. All necessary permits and other requirements will need to be obtained to build on the land. The approval today is only for the division of land; it does not guarantee access or services, nor does it grant Health Department, zoning or planning approval.

**Hearing: Petition to Abandon Old Rock Creek Road (From Bonita Ranger Station Road to Downwind Drive)**

Greg Robertson presented the staff report.

This is a petition to abandon "Old Rock Creek Road from the Bonita Ranger Station Road to Downwind Drive, located in the north one-half of Section 7, Township 11 North, Range 16 West, Missoula County, Montana."

The reasons for the request are as follows:

1. Interstate 90 crosses the roadway, making it impossible to use as a connection road.
2. New Rock Creek Road with Interstate interchange is in a superior location.
3. Dangerous – this roadway crosses Elliot Airstrip – any vehicle travel is dangerous.

The following landowners have been notified: Gary M. Lundberg; Daniel Ekstrom; Gary and Susan Salvador; Jeffrey and Marla Freeman; State of Montana; and Montana Rail Link.

Mike Sehestedt stated that the Board may accept public testimony either for or against the abandonment at this time, then the hearing will be recessed. A site inspection by a Commissioner and the Public Works Director is required. At the time set for reconvening the hearing, a report will be given to the Board and any additional comments may be presented. The Board will make their decision after that.

Chairman Evans opened the public hearing.

Susan Salvador stated that she and her husband own property adjacent to the road that has been petitioned for abandonment. They are in favor of the abandonment. Four years ago when they purchased their property from the State, they were informed that the road would be abandoned at some point in time.

Chairman Evans recessed the public hearing. A site inspection will be scheduled. The Board will receive a report from the site inspection and make a decision on this issue at the Public Meeting next Wednesday, February 11, 2004.

**Hearing: Citizen Initiated Zoning District 45 (Target Range)**

Mike Sehestedt stated that a petition was received from property owners in the proposed zoning district. The petition was reviewed by the Clerk and Records Office and certified that at least 60% of the property owners had signed the petition. Subsequent to that certification and after the matter had been set for hearing, the Clerk and Records Office contacted him to say that a number of people who had signed the original petition wished to withdraw their names. Any person wishing to withdraw their name had to file a written request to do so and a list of those individuals was received. The Clerk and Records Office recertified the petition in light of those withdrawals and determined that there was no longer 60% of the property owners petitioning for the creation of the zoning district. The statute provides that the Commissioners may, upon petition of 60% or more of the affected property owners, create a Citizen Initiated Zoning District. In the absence of such a petition, the Board does not have the jurisdiction to act on the matter. If it is determined that there is not a valid petition with 60% or more of the affected property owners, the Board cannot take further action. He also noted that in giving his advice to the Clerk and Records Office, he relied on a couple of Montana Supreme Court decisions involving written petitions or protests to government. The case law in Montana is crystal clear that any petitioner may withdraw their signature, up until the time the governing body charged with acting on the petition takes action. Based on the Clerk and Records Office certification, sufficient signatures have been withdrawn so that the Board does not have jurisdiction to proceed. In the materials received, there is a suggestion that different petitions were circulated and that signatures were collected on these different petitions. When submitted, only one petition came in but signatures that were collected associated with other petitions were attached. If that is true, that is a criminal offense, however there is no intention to investigate and prosecute. If a petition is circulated and at a later time, what is being requested is changed, the cover sheet cannot just be changed. The matter must go all the way back to the beginning and start over.

Chairman Evans asked if the Board should take testimony from anyone who has something to say on the matter.

Mike Sehestedt stated that the Board could receive comment on whether or not there are signatures from 60% or more of the property owners. If it is determined there is not, then the Board has no jurisdiction.

Chairman Evans stated that the Clerk and Records Office certification shows only 44.7% of the property owners have signed the petition.

Debbe Merseal, Chief Deputy Clerk and Recorder, stated that she reverified the original petition after the petition to remove signatures was submitted and confirmed the percentage of freeholders signing at 44.7%.

Mike Sehestedt stated that if someone wishes to speak as to whether or not there is, in fact, 60%, they should be given the opportunity.

Chairman Evans asked if there were any comments regarding the percentage of signatures on this petition.



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Commissioner Curtiss stated that the public comment period allowed for testimony on anything that was not on the agenda. As this matter is a posted agenda item, she asked if anyone had any comments on this specific item.

There were no public comments.

Commissioner Curtiss moved that the Board of County Commissioners not consider the petition for Citizen Initiated Zoning District 45 in the Target Range area as there does not appear to be a sufficient number of signatures on the petition. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Continuation of Hearing and Decision: Petition to Extend Hayes Creek Road (Blue Mountain area)**

This is a petition to extend Hayes Creek Road "from the intersection of Hayes Creek Road and Skyway to the southern end of Forest Hill across the southeast corner of the Blue Mountain Recreation Area, located in Missoula County, Montana."

The reasons for the request are as follows:

1. This would create a second access/exit route for residents of the area.
2. Due to the increased traffic on Highway 93, this would allow residents of the area to turn onto the highway at the Blue Mountain Road stop light.

The following landowners have been notified:

Bruce N. Allen	Paul M. Rowland Ann Batchelder	Allen Lee	Christopher B. Swartley Mary J. Swartley
Michael Hickey Marjorie Hickey	Henry A. Balstic Jr. Beth A. Balstic	Joseph L. Boddy Marlys C. Boddy	Sandra Perry
Gary Edward Collins	Alex Keith Lenard Lisa Karin Lenard	Marc D. Medeiros Sherrie A. Medeiros	Michael K. Garrick Debra J. Garrick
Dana P. Lund Cristy A. Lund	Carol Harmon Jean Van Allen	Hugh W. Smith Dorothy D. Smith	United States of America
Sandra Perry	Kenneth B. Henegar Carole A. Henegar	Dennis R. Gibbs Donna J. Gibbs	Wayne Henry Hightower Lucinda Hightower
John S. Knudsen Lauren J. Knudsen	Ernest R. Dewey Kerry J. Dewey	Jerry L. Anderson Marion Anderson	Kathryn Marie Moene
Peter B. Odegard Elizabeth A. Odegard	Gregory J. Patent Dorothy H. Patent	Raymond Cross Kathleen Johnston	Shawn K. Kitley Lisa J. Kitley
Robert G. Whaley Lawana Whaley	Rodney E. Nelson Marilyn M. Nelson	Diana L. Six Kirby Whetstine	Carol J. Harmon
Daniel Ray Prideaux Denice R. Prideaux	Jack C. Ward Betty J. Ward	Anthony C. Gallegos Marva Moore	Michael R. Strawbridge
Chris T. Stenier	Robert Dennis Rangitsch	William J. Reneau Susan C. Reneau	Michael Elvis Gray Patricia A. Gray
Robert E. Chafee Julie A. Chafee	Katherine Baublitz	Jim A. Holland Vicki L. Holland	Greg Chiropolos Cheryl A. Chiropolos
Gerald E. Evans Roberta D. Evans	Dennis L. Curran Bonnie L. Curran	Martin J. Beebe E. Joan Beebe	Hugh W. Smith Dorothy D. Smith
Stephen F. McCool Ann E. McCool	Mary C. Langenderfer	Thomas B. Vacura	Flaten Family Trust
Francis D. D'Andraia	Lavern Schwartz Janet Schwartz	Nancy Van Allen	Teresa K. Manlove
Tyrone G. Anderson Nancy M. Anderson	Anne M. Reinhard	Heidi L. Efinger Robert A. Efinger	Norman G. Lavery Marion B. Lavery
Roger J. Hagglund	James L. Rang Melinda Rang	Robert M. Scotson Amy L. Scotson	Milton Datsopoulos Joan Datsopoulos
Gary Edward Collins	Woodland Heights Homeowners Sanitary Association	Brad C. Steiner	Lucas Osellame
J. David Roberts Jill W. Roberts	Gordon A. Fluke Trustee	Raymond Ford Jr. Maureen M. Fluke	Mary C. Langenderfer, MD
Jason Sims Vickie L. Sims	Blake A. Love Kathy M. Love	Geoffrey L. Scott Melody C. Scott	

Chairman Evans stated that this petition asked for a road extension on land that does not have County jurisdiction.

Mike Sehestedt stated that a hearing was held on this issue last week and a site inspection has been conducted. The Board will receive the report from the site inspection and additional testimony may be taken. The fact that the land is not the County's is not depositive as to whether or not the road could be created. Either condemnation or imminent domain may be used, if it is determined that it is in the public interest to create the road.

Greg Robertson stated that he and Commissioner Carey viewed the proposed alignment contained in the petition. After walking the alignment, it appears that the appropriate location would be on Forest Service property. There are several structures on private parcels that would preclude the road from being easily built on private land, but it could physically be done with moderate efforts and costs. The plight of the Hayes Creek residents is quite valid, but this connection is not the answer. Forest Hill Road is very limited and was never contemplated for through access. It would be reasonable to follow Commissioner Carey suggestion and convene a meeting with the Montana Department of Transportation and bring this matter front and center. Loran Frazier, MDT District Administrator, is aware of the problem, but he needs help convincing the decision-makers in Helena to make this a priority. Development has occurred and will continue to occur

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along this corridor. A safety study has been commissioned and it is appropriate to bring the focus on community needs to MDT. Based on his evaluation, he would recommend not pursuing an extension of Hayes Creek Road, but rather pursue an entire corridor plan to deal with Hayes Creek Road and several other roads along Highway 93 from Missoula to Lolo.

Commissioner Carey stated that he concurred with the Public Works Director. The County must do whatever it can to get MDT to move on this. Loran Frazier is well aware of the problems that exist and the County should use its resources to help move toward a swift resolution of the situation.

Commissioner Curtiss stated that a letter was received from Loran Frazier, District Administrator for MDT. In his letter, he said that he has put in motion steps to fund a traffic and access management plan between Missoula and Lolo. The purpose of the plan is to develop safer accesses. He has secured funding to move forward with developing the plan but that does not mean there is money for construction of any new roads. MDT is negotiating a contract with a consultant to begin studying the issues. She would propose that the Board of County Commissioners write to the Montana Department of Transportation and ask to be involved in the development of this traffic and access management plan and find opportunities for public involvement in the process.

Chairman Evans stated that Don Carroll of the Forest Service apologized for not being able to be present today. She agreed that something needs to be done to find a way to provide safer access to Highway 93. The Board will do what they can to be involved in the planning process.

Chairman Evans continued the public hearing and asked for comments.

Susan Campbell Reneau, 5425 Skyway Drive, emphasized again that the Blue Mountain Recreation Area is a national site that is home to thousands of wildlife. She opposes any human development in the area other than what is already there. She presented a letter with signatures of many people who support the Blue Mountain Recreation Area, which states: *"Dear USDA Forest Service and Missoula County Commissioners: We, the undersigned, object to any attempt to harm Blue Mountain Recreation Area, a national recreation site on the Lolo National Forest just outside the City of Missoula. We do not want a paved road through it. We do not want a cemetery built on it. We do not want a housing development on it. We do not want any commercial development on it. We do not want expanded roads built around it. The only thing we want to see on Blue Mountain Recreation Area is wildlife and dirt trails for hiking, biking, jogging, folging, cross-country skiing, bird and wildlife watching and meditating. Please do not consider any human development on Blue Mountain Recreation Area except that which has already been constructed and maintained. Thank you."*

Kathy Cross, 5435 Skyway Drive, stated that she called the Hayes Creek intersection "The Death Trap." Residents had presented a petition for a traffic light. This petition for a road is a desperate act because the traffic light petition received a negative outcome. Citizens have had to become traffic planners because the Commissioners have failed to act to provide for the safety for the residents. Action needs to be taken now as the situation gets worse every day.

Chairman Evans pointed out that the highway is under the jurisdiction of the State Highway Department, not the Missoula County Commissioners. The Board was not the governing body that denied their request for a traffic light. They will work with MDT to find safer access, which has many variables.

Kathy Cross asked who the residents should turn to, to correct the problem.

Chairman Evans stated the highway is under the jurisdiction of the State Highway Department and it is also an international highway, so the Federal government may also be involved.

Kathy Cross asked who to contract for specific advice on how to proceed so this issue does not die.

Commissioner Curtiss stated that the letter from Loran Frazier says that the Hayes Creek residents contacted him two years ago. As MDT begins to study the traffic and access management plan, the Commissioners will be involved in the process.

Kathy Cross stated that she would like to be involved in the process.

Carrie Dewey, 7315 Burr Lane, thanked the Commissioners for their attention to this issue. Not all the residents are hysterical about it, but they do have grave concerns. She has lived in the Hayes Creek area for over 20 years and has seen a lot of changes. During peak hours, she does feel unsafe but has never had an accident accessing to or from Highway 93. Traffic continues to build as development increases. She and her husband are opposed to another access road and a stop light at Hayes Creek. The stop light at Blue Mountain is perilous in many ways. She agreed that it is the entire corridor that needs to be evaluated. Many of the citizens in the Hayes Creek area are willing to work toward a solution for the entire corridor.

Vince Marciano stated that his understanding was that a road would not be crossing the Blue Mountain Recreation Area on Forest Service land and asked if that was correct.

Commissioner Curtiss stated that the Board has not made a motion to that effect yet, they are still hearing additional testimony.

Vince Marciano stated that he heard last week that the bridge from the Miller Creek area might be brought across at the Hayes Creek area instead of Blue Mountain Road. The light at Blue Mountain Road helps at the Hayes Creek intersection.

Greg Robertson stated there are 3 alignments for the bridge crossing that are undergoing a full analysis to determine the costs and benefits of each. The draft EIS will be out sometime this summer. He suggested that Mr. Marciano make his comments known to the Federal Highway Administration.

Commissioner Curtiss stated that public hearings would be held once the draft EIS is released.

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

Greg Robertson stated that in the EIS process that is underway, there are three alternative alignments that have been selected for full evaluation and the Hayes Creek interchange is one of them.

Gordon Fluke stated that in material he received from the consulting firm, the Hayes Creek crossing had been eliminated.

Greg Robertson stated that was incorrect, Hayes Creek is definitely one of the three alternatives being evaluated.

Commissioner Carey moved that the Board of County Commissioners authorize Missoula County to help expedite the study that the Montana Department of Transportation is conducting on a traffic and access management plan for Highway 93 from Missoula to Lolo. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners deny the petition to extend Hayes Creek Road from the intersection of Hayes Creek Road and Skyway to the southern end of Forest Hill across the southeast corner of the Blue Mountain Recreation Area, located in Missoula County, Montana, based on information provided by the U.S. Forest Service, testimony by citizens and results of the site inspection. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Continuation of Hearing and Decision: Petition to Establish Rowan Street as a County Road (between Lolo and Florence)**

This is a petition to establish "Rowan Street, located in the northwest one-quarter of Section 14, Township 11 North, Range 20 West, Principal Meridian, Montana, Missoula County, Montana, from the end of that portion of the Bitterroot to Bannack Road within the 60 foot wide Rowan Street right-of-way; thence, westerly approximately 2,116 feet to the easterly right-of-way of Queen Anne's Lane."

The reasons for the request are as follows: 1) As a public roadway, Rowan Street would be eligible to utilize public funding and bonding for improvements and/or maintenance.

The following landowners have been notified:

Timothy D. Peterson	Stefan Greger	Squaw Creek	William Angove	Catherine M. Matthews
Barbara M. Petersen	Diane C. Greger	Partnership	Mary Lou Angove	Janet F. Matthews
Kenneth D. Hayes	Alex V. Hamilton	Jerrilyn K. Scheytt	Russell K. Reed	Bob Chapeski
	Debra L. Hamilton	Gregory P. Scheytt		

Commissioner Curtiss stated that several comment letters have been received since the public hearing last week which have been added to the record.

Colleen Dowdall stated that she received an e-mail from Kim Ericsson asking a question about whether the covenants created an easement across these properties. The covenants establish an agreement that the road will be maintained; it requires ownership in the Association and payment of assessments for maintenance of the roadway but there is nothing in the covenants that grants an easement. People have been operating under these covenants believing that everyone has access across the area, but the only thing covered in the covenants is the repair and maintenance of the roadway. The covenants apply to maintenance of all roads, County and private, within the area encompassed by the Homeowners Association.

Greg Robertson stated that he and Commissioner Carey viewed the segment of Rowan Street in question. After preliminary examination of the road, it was noted that it would not be a significant expense to bring it to County standards. The road bed is there, it might require relocation of some utility lines, drainage improvements and then be rocked and paved. The general alignment is there and the road has a fairly gentle grade. His recommendation is for one of two things: 1) that if the Board decides to accept this as a County road, that it be contingent upon creation of an RSID to improve the road to County standards and accepted for maintenance; or 2) based on testimony, pursue a process of creating a private easement in favor of the landowners who rely on Rowan Road for their physical access. Some of the concerns mentioned were future subdivisions and increased traffic. If the easement is conveyed through private means, it could be done for specific purposes and to specific individuals of record. If future subdivision occurred outside the boundaries of Rowan Road, but used Rowan Road for access, there would be an overburdening of the easement. Subdividers would have to negotiate with the original grantors of the easement to seek permission to subdivide. They would have the ability to control their own destiny.

Commissioner Carey stated that he would defer to Greg for costs of any road improvements needed. The residents need more time to work on a solution. He was impressed by the home-made signs on the road, it is obvious these people have taken to heart their responsibility to care for the road. He wouldn't want the Board of County Commissioners to impose something on that neighborhood unless the Board has to do so. The neighbors need to be given a chance to work something out among themselves.

Chairman Evans continued the public hearing and asked for comments.

Greg Martinsen read from a prepared statement. "The reason that County governments were created in the very first place was to provide for the public services that the residents, landowners and taxpayers of the County require as necessary or appropriate. I believe that the County government has an obligation to provide, at a minimum, for legal access to existing dedicated right-of-ways. The reason that we have County roads is because it is a service of County government that the citizens require. If the need of the citizens for County roads did not exist, then the law that allows a group of citizens to present a petition to create County roads would not exist. The legislature of the State of Montana, and every other state since the beginning of American law making, has recognized that the government has an obligation to provide public access and public roads to places where it is needed by the public. I understand that the courts have

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*defined the "public" in cases that have established public prescriptive easements, and they say it is an "unquantified but numerous members of the public." It does not seem like good public policy to have numerous County residents who live on County roads but do not have legal access to their homes and property over a County road. There is an opportunity here to provide this access to the public because the public has presented a petition to create Rowan Street as a public road. These landowners and residents are not trying to create a public access in a location where it has not previously existed, or in a place that is remote and serves a very small number of individuals. Traffic and transportation planners for Missoula County are always promoting and wanting grid road connections. In this case, this roadway is a logical connection of two existing County road right-of-ways, by the shortest distance between their ends, a straight line. Please remember that the public created County government to provide the needs and services for the public."*

Rob Vacek, 15910 Dundee Road, stated, regarding the issue of needing more time, that ever since this area was developed and the Homeowners Association was established, they have been living under the false impression that everything was fine and access would be available to everyone. He asked Kim Ericsson if he had legal access and she said he did have legal access. He asked if she was sure and she got somewhat indignant. She condescendingly stated that he shouldn't question the authority of the Homeowners Associations. He called the County Attorney's Office and was informed that he did not have legal access to his property. There are a few people at the bottom of the hill that are holding residents above them hostage, and not allowing them to subdivide or do with their property what they have the legal right to do. Residents have come to the Board asking for guidance and judgment. They don't need to talk about this anymore; the need is clear, they need a judgment on the matter. He did not understand how Commissioner Carey did not see their need. They are asking for a judgment, not to pass this on for another period of time. The complaint about dust has been raised, but actually, they don't want any growth in the area. These people are living in the past if they won't accept the fact that growth is happening. These people are being selfish and holding onto the way things were in the past. They are penalizing anyone who wants to move forward. He questioned their ethics.

Chairman Evans stated that according to legal counsel, residents have physical access and legal access; but the legal access is not in the same location as the physical access.

Rob Vacek stated that if he wanted to cut across Mrs. Maclay's property and through her barn, then he did have legal access. He understood that the two accesses were not the same.

Jim Schmautz, 16190 Highland Drive, stated that over the last 20 years, one member or another of the Homeowners Association has talked to County representatives to try to get a determination of who owns what. He has heard several scenarios as to who owns the road. It was finally determined that the County owns all the roads except this 2,100 feet. The County roads are in worse shape than the 2,100 foot section of road. The Homeowners Association has maintained that section of road. Concerns were raised about the dust. The Homeowners Association has spent a great deal of money to maintain that section of road; they paved the portion just off Highway 93, they raised the road bed, they put in culverts, they oiled the road. He didn't care if the road was ever paved, but if the issue of access can be cleared up, then he didn't have to worry about his title being in question or his investment being jeopardized. If it was the original developer's intent for unfettered access, he should not have to go to these few homeowners and beg for legal access. That is not going to happen, not all those homeowners get along, nor do they have the same focus. They are not going to come up with a cohesive statement that gives access. He wondered why more people weren't concerned about this issue, but most don't know what is going on. Every time there is a meeting on the issue, everyone needs to be re-educated. The property next to him has 3 houses on approximately one acre each, which was divided sometime in the past. Ownership of those homes has changed many times over the last five years. There is no way to get all these people together to come up with a solution. The simplest thing is to take it over as a County road. He would not mind paying to have the road fixed. He would probably have a better chance of suing the 10 or 11 property owners for access than get the other 79 residences to agree. Cases like this in other places have ended up in court, properties being burned and people being chased off at gunpoint. These things escalate and he did not want to go there. He would just like to quietly live in his home and go home at night. This seems to be the simplest forum to correct the problem.

Jeff Miklautsch, 16200 Folsom Road, stated that he agreed with Mr. Schmautz except for the part about the cost to fix the road. He has been paying homeowners dues to maintain association roads. These roads are indeed in better shape than when he first moved in. He did not like the idea of more taxes and an RSID. He already pays his fair share to use roads that are public and private. He is not in favor of improving the road through an RSID. Future development that may tie into this road system also concerns him. If a private access agreement could be accomplished so this is not a public road, then there could be some control over how much use the road could handle.

Marcia Hughey, 16305 Highland Drive, stated that this issue concerns her and her husband greatly. They want legal access to their property. At the same time, they would like to pursue an easement that would address access throughout the subdivision. As Jeff just mentioned, they too have concerns about costs of an RSID. It is easy to fix the road right now, it will be a different story when the road is paved.

Diane Greger stated that she understands that legal access needs to happen. She lives in one of the homes that fronts on the section of road in question. How it should happen is the question. She would like to see an unlimited easement put in place. This gives everyone legal access and the road continues to be maintained through Homeowners Association dues. A few Association members have graders and do a great job of maintaining the road; it is oiled every spring. The Association has liability insurance which protects them in case of accidents. She hoped that when the site inspection was done, the County realized that taking this road and improving it would mean moving the utility lines in order to widen it to standards. They looked into this a few years ago. They received a quote to move just the electrical line which was \$50 per foot, along with the estimate of \$40,000 to \$50,000 for improvements, which is quite expensive. This would be to Queen Anne's Lane. The road above Queen Anne's Lane is too steep to meet County standards. Would the road have to be re-routed to meet County standards. When homeowners split their lots, it becomes a subdivision and they need a paved road. A paved road will cost everyone more money through an RSID. She wanted to read a passage from her title insurance, which makes her wonder if there is already legal access, the title company couldn't tell her exactly what it means: "An easement affecting a portion of said premises and for the purposes stated herein, incidental purposes delineated on the face of, or dedicated by said plat, for: private road and public utility easement affects south and west 30 feet."

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Commissioner Carey stated that Mr. Vacek mentioned it would be pointless to try to work anything out because the Homeowners Association is hopelessly divided on the matter.

Diane Greger stated she could only speak for herself. She is not against legal access and an unlimited easement might be the way to go.

Commissioner Carey asked if there would be any point in taking more time to work something out among the homeowners.

Diane Greger stated she did not know.

Commissioner Carey stated that he did not want to impose a situation which over time will have people resenting each other. It would be better to try to work something out among the residents.

Diane Greger stated that until this matter came up, everyone got along fairly well, but it has now caused a division among the residents. She and her husband do not want to pay any more taxes which would happen with an RSID.

Commissioner Curtiss stated the petition to establish this road as having a County easement on it; it is not to establish an RSID. The RSID process begins with a petition signed by 60% or more of the residents. This petition is to establish that this 2,116 feet of the road has a County easement on it so that everybody can have clear legal access provided on their title policies. The RSID is another process. The road can be accepted as an unmaintained road and would be cared for as it is now by the Homeowners Association.

Jim Schmautz stated that he understood that the only way the County would accept this road was if it was improved.

Mike Sehestedt stated that what has been presented are staff recommendation. Ultimately, the Board makes a decision on the petition. There is an established County policy approved by the Commissioners that says that new County roads are not accepted unless they are brought to County standards. Staff has said that there is no reason to depart from that policy. Since the Commissioners set the policy, they can choose to do whatever is available under the law. They can accept the road as a County road no matter what condition it is in and they can do it without following the policy requiring improvements.

Jim Schmautz stated the Homeowners Association has done a lot of work on the road and the area to make this an enjoyable place to live. There is some contentiousness over the idea that taxes are going up. He misspoke when he said he would be willing to pay anything, obviously he doesn't want to spend any more than necessary. If it is deemed that the RSID should go forward, he will pay his share. He didn't expect to get something for nothing. This can be discussed forever. If these 10 or 11 homeowners could agree, this would have been signed a long time ago. That hasn't happened in over 20 years. The potential is there for the County to accept the road without maintenance and that is what the petition is asking.

Jane Stoll, 6720 Rowan Street, stated that she echoed others comments in favor of the petition. A lot of residents didn't realize there was a difference between legal access and physical access. It is only fair and right to allow this access to their properties. She asked the Board to dedicate Rowan Road as a County road.

Mike Dwyer, 16090 Dundee Road, stated that some past presidents of the Homeowners Association have expressed frustration because there are two different groups with differing opinions. The further from Highway 93, the more issues need to be dealt with, hillside, ice, snow, etc. It is hard to get a consensus from everyone depending on how far they travel on the road. He then read a prepared statement: *"I'm here today to urge the County of Missoula to accept the gap in Rowan Street as a County right-of-way. With County right-of-way leading into and exiting from the gap, it seems to me that the logical solution that Rowan Street be one continuous County road is acceptable. It has been explained to us that the gap, which is under ownership of approximately 10 different parties, is not a legal access into Macintosh Manor. That means that the 80 or so landowners in this area have no right to legally access their property. The fact that no problems have come up due to this situation is not very comforting. I would prefer that we deal with this issue of legal access before problems do arise. Most of the criticism to this petition has come from the fact that it may allow further development within the Macintosh Manor area leading to more traffic and more dust. I don't think having legal access to your property automatically allows you to subdivide in any way you wish. There's another process that deals with subdivisions and they will all go through that process and be judged on their own merits. Rowan Street has been described to you as a washed out road with people racing up and down it. This does not describe the Rowan Street that I know. For the most part, the people of Macintosh Manor drive in a very diligent and safe manner, even courteous at times. The Homeowners Association has been doing a very good job of maintaining the road; plow the snow, spread sand on the ice in the winter and three or four times a year they grade the road with a bulldozer. Culverts have been installed in all the appropriate places and are cleaned out in the spring. I know dust is a major concern by those who oppose this petition. I would like to say that I sympathize with their concern. The Homeowners Association has material applied to the road every year to help alleviate this problem. The only way to totally do away with the dust would be to pave Rowan Street, and the only way to do that would be through an RSID. The only way to get an RSID even discussed would be if Rowan Street were a public right-of-way which brings us back to the problem of legal access. It was stated last week that there are roughly 1,500 miles of County road in Missoula County. We ask that the County accept our 2,116 feet into that. That would be an increase of 26/1000 of 1 percent. I've drawn some interesting comparisons to that ratio. If all the County roads in Missoula County were reduced to 8 miles, that would be the distance between Malfunction Junction and the first stoplight in Lolo, we would be wanting to add just under 11 feet. If all the County roads in Missoula were equal to one day, 24 hours, we would be asking for an addition of 3/4 of a second. If all the County roads were equal to one football field, 100 yards, we would be asking for an addition of just under one inch. Thank you."*

Gerald Johnson, 16125 Queen Anne's Lane, stated that he would like the Commissioners to give residents legal access and let the Homeowners Association maintain the road.

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Lee Vandeburgh, 16545 Dundee Road, stated that he echoed the comments of those in favor of the petition. His understanding is that if the County takes over this road, it won't cost anybody any more money at this time.

Chairman Evans stated that if it is accepted as a County road, there is no requirement that the County maintain it and it should not cost him anything, other than what he is currently paying, but the County would not be plowing, sanding or fixing the road.

Lee Vandeburgh stated that the strongest reason for this is to provide title insurance. In any land transaction, if even a comma is in the wrong place on any document, it becomes a huge issue. Now that everyone know there is a problem, it must be disclosed and it can affect the title policy and financing. This could turn into a huge issue with lawyers making money and everybody else fighting.

Marcia Hughey, 16305 Highland Drive, stated that the question was posed as to whether the homeowners would be willing to do this. It is not the entire Association, it is just the homeowners who live on that 2,100 foot stretch of road. She hasn't talked to all of them, but feels there is a consensus among those she has spoken with that this is something they would consider. The legal access is a big issue; there are other private roads within the Association. She thought that it would be a good idea to have all the roads researched to see what access exists. She has been told that Queen Anne's Lane only has 20 feet of public access. She hoped there would be some time to investigate the other roads.

Colleen Dowdall stated that she did not recall if there was a portion of Queen Anne's Lane that only has 20 feet of right-of-way. She thought it was 40 feet, but there may be a portion that has less, because it is on the edge of the subdivision. The Orchard Tracts were created with 40 feet of right-of-way on the centerline between tracts. During review of some subdivisions in this area in the recent past, the County has acquired additional dedications of right-of-way as a condition of subdivision approval. They have also been conditioned on acquiring access across the gap. The petition is to create a public road across private property and the Board does have jurisdiction and authority to grant that petition.

Mike Sehestedt stated that if the Board establishes a public road across private property, and they do have the authority to do so, the next issue is determination of the value of the taking. It has been the County's view that when a public road is established over an existing right-of-way, that there are no damages and there is no taking. In this case, that position would be backed by the fact that the public has been using it openly, notoriously and hostilely. The question of impact to the property across which that road goes must be addressed. In this case, the issue is resolved by the existence of the private easement and the fact that the public has used it for some period of time.

Commissioner Carey stated that if this is accepted as an unmaintained County road, what happens to the Homeowners Association's efforts to maintain the road.

Mike Sehestedt stated that the Homeowners Association does not have an obligation to the County to maintain any of their roads. The agreement to maintain the roads is in their covenants, which is between the property owners in the subdivision. That responsibility does not go away.

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

Commissioner Curtiss stated that she agreed with the County's policy to not accept roads unless they are improved to County standards, but in this case, the road is in pretty good shape and the public benefit outweighs the policy. The legal access for 80 properties that are already on County roads is paramount. This is an opportunity to make a connection for a grid road system. A private easement is not a good planning tool for growth management. There is the subdivision review process for those wishing to divide their property. This petition does not create an RSID, the citizens can decide if they want to do that later and property owners would have the right to protest the creation of an RSID. Another issue to consider is that if the road is improved to County standards and the County takes over maintenance, it is possible that Homeowners Association dues may decrease. The homeowners have made an effort to solve this in another way. It is not in the public interest for people to sue to get a prescriptive right to use a road.

Commissioner Curtiss moved that the Board of County Commissioners accept the petition and establish Rowan Street, as described in the petition, as a non-maintained public road.

Mike Sehestedt suggested adding to the motion that the Board would proceed to take the necessary statutory steps to open Rowan Street as a public road.

Commissioner Curtiss stated that she would add that to her motion.

Commissioner Carey stated that he agreed with Commissioner Curtiss. He had hoped there might be a way for the homeowners to work something out but he did not think that would happen.

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

There being no further business to come before the Board, the Commissioners were in recess at 3:00 p.m.

THURSDAY, FEBRUARY 5, 2004

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

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Shea N. Maulding, Missoula, as applicant for Missoula County Public Schools 28 Warrant #134556, issued January 16, 2004 on the Missoula County MCPS Payroll Fund in the amount of \$93.00 (for wages), which was not received in the mail. No bond of indemnity is required.

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Rodney Feistner, Frenchtown, as applicant for MUTD Warrant #61518, issued



January 26, 2004 on the Missoula County Urban Transportation Fund in the amount of \$184.94 (for tool allowance). No bond of indemnity is required.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Shirley E. Faust, for the month ending January 31, 2004.

#### ADMINISTRATIVE MEETING

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

Resolution No. 2004-012 – The Commissioners signed Resolution No. 2004-012, dated February 5, 2004, a Budget Amendment for Public Works (Bridge Fund) in the amount of \$5,700 (expenditure) for the Sign Department - remodel. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Resolution No. 2004-016 – The Commissioners signed Resolution No. 2004-016, dated February 5, 2004, a Budget Amendment for the Missoula County Fair Ice Rink Project in the amount of \$850,000, in order to create a Capital Projects Fund to account for the Ice Rink Construction Project currently being accounted in the Fair Fund. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Other items included:


- 1) The Commissioners approved a motion to return earnest money to WW Realty (relating to an Option to Purchase Lots 1 and 2, Block 10, Missoula Industrial Park.)
- 2) The Commissioners approved a motion to direct staff to continue work with the Youth Court Intensive Supervision Program, which places kids back into a supervised home rather than incarcerating them. JAIBG funding ends February 29, 2004; a Department of Corrections State grant is available to continue funding the program through September 30, 2004, when additional JAIBG funds may be available.

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

#### **FRIDAY, FEBRUARY 6, 2004**

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

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

#### **SATURDAY, FEBRUARY 7, 2004**

In the afternoon, Commissioner Curtiss attended an Eagle Scout Award Presentation to Ryan Richards held at the Seeley Lake Community Hall.

#### **MONDAY, FEBRUARY 9, 2004**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Curtiss was in Billings the week of February 9<sup>th</sup> through the 13<sup>th</sup> attending the MACo Midwinter Meetings.

Claims List – Commissioners Carey and Evans signed the Claims List, dated February 4, 2004, with a grand total of \$4,608.98. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated February 5, 2004, with a grand total of \$69,608.49. The Claims List was returned to the Accounting Department.

Monthly Report – Chairman Evans examined, approved and ordered filed the Amended Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending January 31, 2004.

Signature Page – The Commissioners reviewed and signed one (1) Claims Signature Page for the Larchmont Golf Course Accounts Payable Invoice Register dated February 3, 2004, in the amount of \$13,497.18. The Signature Page was returned to the County Auditor.

#### **TUESDAY, FEBRUARY 10, 2004**

The Board of County Commissioners met in regular session; a quorum of members was present. At noon, Commissioners Carey and Evans attended MAEDC's Annual Membership and Awards Luncheon held at the Holiday Inn.

#### Site Inspection

In the afternoon, Commissioner Evans accompanied Public Works Director Greg Robertson on a site inspection of Old Rock Creek Road.



Claims Lists – Commissioners Carey and Evans signed two (2) Claims Lists, dated February 5, 2004, with the following grand totals:

- 1) \$21,286.79; and
- 2) \$63,905.10.

The Claims Lists were returned to the Accounting Department.

Claims List – Commissioners Carey and Evans signed the Claims List, dated February 9, 2004, with a grand total of \$16,547.09. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Evans signed two (2) Claims Lists, dated February 10, 2004, with the following grand totals:

- 1) \$14,564.83; and
- 2) \$17,250.89.

The Claims Lists were returned to the Accounting Department.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Michael McMeekin, for the month ending January 31, 2004.

#### ADMINISTRATIVE MEETING

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

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 03 – CY2004 - Pay Date: February 9, 2004. Total Missoula County Payroll: \$892,449.73. The Transmittal Sheet was returned to the Auditor's Office.

Letter – The Commissioners signed a letter, dated February 6, 2004, to Sergeant Mark Foss, Missoula County Detention Facility, regarding the Commissioners' tour and inspection of the Detention Facility on February 2, 2004. The Commissioners' inspection found that the safety and security of the facility is well planned and executed; recreation is provided adequately to allow for health minds and bodies; the staff is well trained and provides excellent treatment of the inmates; and the facility has the necessary written policies and procedures that pertain to the purpose, programs and services offered by the facility.

Memorandum of Understanding – Chairman Evans signed a Memorandum of Understanding with the Montana Legal Services Association ("MLSA") supporting their application to the Department of Justice for a Legal Assistance for Victims grant for the continuation of the MLSA Domestic Violence Unit and their needed services in Missoula County and throughout the state. The total amount shall not exceed \$12,709.00. The term will be October 1, 2003 through September 30, 2004. All other terms and conditions are set forth therein. The document was returned to Leslie McClintock in the Office of Planning and Grants for further handling.

Modified Agreement – Chairman Evans signed Modification 1 of Agreement No. 202023-1, dated February 10, 2004 between the Missoula City-County Health Department and the Montana Department of Environmental Quality ("DEQ"), which extends the deadline from August 31, 2003 to August 31, 2004 for reports on source water delineation. All other terms and conditions remain as previously stated and/or modified. The document was returned to the Health Department for further handling.

Easements – The Commissioners signed six (6) Public Roadway Easements for the Mullan Road Grid Plan, between Missoula County and the following landowners:

- 1) Eleanor M. Williams, dated December 2, 2003, owners of Lot 4 of Forty-Four Ranch Estates, located in Section 13, T 13 N, R 20 W, PMM;
- 2) Sinclair Living Trust, dated November 19, 2003, owner of Tracts 5 and 7 of COS 3176, located in the W½ of Section 12, T 13 N, R 20 W, PMM;
- 3) Michael E Flynn and Susan Flynn, dated October 28, 2003, owners of Tract 9 of COS 3176, located in the SW¼ of Section 12, NW¼ of Section 13, T 13 N, R 20 W, PMM;
- 4) Flynn Family Limited Partnership, dated November 20, 2003, owner of Tracts 4, 6, 8 and 10 of COS 3176, located in the E½ of Section 12, T 13 N, R 20 W, PMM;
- 5) Estate of Earl R. Stewart, dated November 7, 2003, owner of lands located in the SW¼ of Section 12, T 13 N, R 20 W, PMM and Tract 1 of COS 3462 located in the NW¼ of Section 13, T 13 N, R 20 W, PMM; and
- 6) Emmett H. Flynn Testamentary Trust and the Kathryn R. Flynn Family Limited Partnership, dated October 28, 2003, owners of portion C of COS 4112; the SE¼ SW¼ and the west 609.18 feet of the SW¼ SE¼ of Section 12, T 13 N, R 20 W, PMM; and the NE¼ NW¼; the NW¼ NE¼ and those portions of the SE¼ NW¼ and the SW¼ NE¼ located northeast of the Chicago, Milwaukee and St. Paul railroad right-of-way and north of Mullan Road, less a portion shown on warranty deed recorded in Book 447 Micr. Page 757, of Section 13, T 13 N, R 20 W, PMM.

Proclamation – The Commissioners and Mayor Mike Kadas signed a Proclamation declaring April 30, 2004 as *Arbor Day* and the month of April, 2004 as *Arbor Month* in Missoula County, urging all citizens to support efforts to protect our trees and woodlands, to support our County's forestry program, and to plant trees to gladden the hearts and promote the well-being of present and future generations.

Project Application – Approved at a Public Hearing on March 12, 2003, the Commissioners approved and signed a CTEP Project Application for the Spurgin-Big Sky Walkway, which will be transmitted to the Montana Department of

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Transportation. This project will be programmed for construction in FY 2005. The document was returned to Public Works Director Greg Robertson for further signatures and handling.

Request for Action – Per recommendation of the Office of Planning and Grants (“OPG”), the Commissioners approved a \$10,000 County Program Income grant request from Mountain Home Montana, to be used for basic needs such as food, diapers, formula, transportation costs, etc. for homeless teen mothers and babies served by the organization. A previous federal grant request that Mountain Home Montana had requested has been “frozen” until July. The document was returned to Cindy Wulfekuhle in OPG for further handling.

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

**WEDNESDAY, FEBRUARY 11, 2004**

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 February 6, 2004, with a grand total of \$56,776.69. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Evans signed six (6) Claims Lists, dated February 10, 2004, with the following grand totals:

- 1) \$33,683.65;
- 2) \$12,723.83;
- 3) \$4,738.14;
- 4) \$32,652.90;
- 5) \$18,224.14; and
- 6) 33,457.94.

The Claims Lists were returned to the Accounting Department.

Claims List – Commissioners Carey and Evans signed the Claims List, dated February 11, 2004, with a grand total of \$99.40. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Clint Cornish, Missoula, as Principal for Missoula County Public Schools Warrant #27-101628, issued January 28, 2004 on the Missoula County General Fund in the amount of \$30.00 (for refereeing), which cannot be found.

**CHIEF ADMINISTRATIVE OFFICER MEETING**

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

Letter – Chairman Evans signed a letter, dated February 10, 2004, to Diane Stuart, Director, Office on Violence Against Women, Washington, D.C., certifying that any funds awarded through the Safe Havens: Supervised Visitation and Safe Exchange Grant Program will not be used to supplant existing funds for program activities, and that these funds will not replace nonfederal funds that have been appropriated for the same project. Missoula County will apply for up to \$350,000 for a two-year contract with the YWCA to implement the proposed supervised visitation center. The letter was returned to Kristina Swanson in the Office of Planning and Grants.

Agreement – The Commissioners signed a Memorandum of Agreement between Missoula County and the Missoula Ravalli Transportation Management Association (“MR TMA”) for the provision of school outreach coordinator services for the purpose of enabling Missoula In Motion to conduct Transportation Demand Management (“TDM”) marketing activities to youth in Missoula area schools. The total amount shall not exceed \$5,590.00. The term will be November 1, 2003 through September 30, 2004. All other terms and conditions are set forth therein. The document was returned to Melissa Wangler at Missoula In Motion for further signatures and handling.

Partial Reconveyance – The Commissioners signed a Request for Partial Reconveyance, dated February 11, 2004 regarding Lot 3A of 2360 Mullan Road, Lots 3 and 4, formerly known as the “jail remainder” and sold by Missoula County to Montana Regional Orthopedics, LLC. The Release Payment on the Note has been made. The intent is to convey the land to the Missoula Housing Authority for homeless veteran housing. The document was returned to Duskie Gramm at Western Title and Escrow.

Resolution No. 2004-017 – The Commissioners signed Resolution No. 2004-017, dated February 11, 2004, a Resolution to rezone a portion of the property (off of Miller Creek Road) described as COS 3907, Tract B2, located in Sections 7 and 12, T 12 N, R 19 W, PMM, from C-RR1 (Residential – One dwelling unit per acre) to C-RR2 (Residential – Two dwelling units per acre).

Other items included:

- 1) A meeting tentatively scheduled for February 20<sup>th</sup> to discuss Houle Creek issues will be held March 5, 2004.
- 2) The Commissioners were given a briefing regarding Seeley Lake Community Council issues.

**PUBLIC MEETING – February 11, 2004**

The Public Meeting was called to order at 1:30 p.m. by Commissioner Chairman Barbara Evans. Also present were Commissioner Bill Carey and Chief Civil Deputy County Attorney Mike Sehestedt. Commissioner Jean Curtiss was attending the MACo Midwinter Meeting in Helena, MT.

**Pledge of Allegiance**

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Public Comment

Sam Bolton stated that he and two others were representing the Seeley Lake Community Council. He thanked Commissioner Curtiss for putting in an appearance at a fundraiser for a local teenager who has cancer. The event raised close to \$20,000. The Council's reason for being here today was to ask for a little extra money.

Ron Cox stated that the packet sent to the Commissioners was information on what the Council has been doing for the past couple years. For the past few years, an issue that keeps coming up in the Seeley Lake community is the need for affordable housing and the need for some kind of an assisted living facility. A few weeks ago, a focus group met with Joe Hollander, an expert from back East with experience in developing assisted living facilities for lower income people. One of the main things that needs to happen to move a project forward is a housing needs study. There is a rumor that someone from either the City or County is about to begin, or has begun, such a study, but they are unsure what the status might be. If such a study is going on or about to begin, it would be important for the Seeley Lake community to be included and identified as a stand alone community rather than a piece of the entire County. That need has been further amplified by the sewer situation in Seeley Lake. The preliminary engineering report is mostly complete. The bottom line rough figure is approximately \$32 to \$35 per month per property for installation costs which probably won't be palatable to most people in the area. During a meeting with the major grant providers, it was determined that identification of income levels within the sewer district is critical. If the income level data shows an average below \$45,000, it will open up a lot of other avenues for grant assistance, to get the per month cost down to around \$15, which might be more palatable to residents. It would be great if the Seeley Lake community could piggyback on such a housing study. Mr. Hollander said it would cost approximately \$15,000 for the community to do a housing study by itself. He also suggested including all of the northern part of the County in the study.

Chairman Evans stated that the Board did not know of any housing study the might be happening.

Ron Cox stated that he sent an e-mail to Cindy Klette a few days ago inquiring about it, but had not received a response yet.

Chairman Evans stated that another organization in Missoula might be conducting the study, perhaps the Housing Authority or the Mental Health Center, but the Board was not aware of any study.

Ron Cox stated that someone in Helena said that an organization there had given money to someone to conduct such a study.

Mike Sehestedt stated that the County would certainly look into the matter to see if such a study is upcoming.

Ron Cox stated that Mr. Hollander said a County department would be the appropriate agency for such a study.

Commissioner Carey stated that the City is installing sewer throughout East Missoula and several contracts have been issued to help low and moderate income families with installation costs. That was done through a Community Development Block Grant. Cindy Wulfekuhle at OPG headed that project. Demographics and income levels are necessary as part of the grant process.

Ron Cox stated the sewer board would be pursuing that in more detail, but there could be some overlap between just the sewer district and the entire Seeley Lake community. The housing study would need to be larger than the sewer district study. He was not sure what all would be included, but the bottom line that most grant providers look at is an average income figure.

Chairman Evans stated they would look into the matter.

Ron Cox stated that the Council gets a \$1,000 annual allotment for administrative functions. They requested their yearly amount last June. In July or August last year, Philip Maechling at OPG told them about an opportunity to have a University of Idaho landscape architect practical exercise done in the community. Philip said it would not cost much and would have good benefits. The professor at the University said they were just asking for gas money to get the students to Seeley Lake, which the Council thought would be \$200 to \$300. The final bill for gas alone was \$1,600, which was actually a reasonable cost, not unfair but a surprise. The Council received their \$1,000 annual allotment last November and in December, they had to give \$1,000 back to this project, which really depleted their coffers. They are anxious now as to whether they will have enough money to carry them until the next budget year. Even though the fiscal year begins in July, it is usually November before they see the money. They were wondering if there was any way they could have another \$1,000 for this year to help them out. Part of their ongoing funding efforts has been to hire Pat Swan-Smith as an administrator for the Council. They would appreciate any supplemental funding to tide them over until the next fiscal year's payment is received.

Chairman Evans stated the Board discussed their request and the feeling is to not allocate the money. Each Community Council is allocated \$1,000 per year and that is all that is included in the budget. Since the Planning Office suggested this to the Council, it would be appropriate to see if they had \$1,000 in their budget to give to the Community Council. She suggested that if something like this is ever offered again, the Council should get things in writing, including costs. This expense has put the Council in a bad spot, which puts the Commissioners in a bad spot and she did not care to reward Philip for that.

Mike Sehestedt stated that the Board needs to make the decision, but he would counter the perception of rewarding Philip and see it more as helping the Community Council.

Chairman Evans stated that the Board would need to check with Dale Bickell, Chief Financial Officer, to see if there was any money to fund their request.

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Ron Cox stated that Philip sent them a bill for \$1,000 for their share of the project. The Council's treasurer, who was also perturbed about the situation, had already sent \$250 to cover food and accommodations so she only sent Philip \$750. He did not want this to create a problem with OPG, but that is the situation they find themselves in.

Commissioner Carey stated that the activity report mentions a contract with an individual to provide administrative assistance.

Ron Cox stated that was Pat Swan-Smith as he mentioned.

Commissioner Carey asked if the obligations of that contract had been fulfilled.

Ron Cox stated it had not and they hope they won't have to lay her off next month or in May.

Commissioner Carey asked if she was paid through a certain date.

Ron Cox stated that she gets reimbursed for her expenses. There is still a little bit of money left, but not enough to utilize her much longer.

Commissioner Carey stated that it would be worthwhile to write OPG a letter, pointing out that the Council exceeded what they felt were reasonable expenses, to see if there was anything in their budget to help.

Ron Cox stated that have made that request informally but perhaps a letter from the Board might have more weight. Phil also made some efforts to get money from the Forest Service, but that was not successful.

Chairman Evans stated that there was information in the packet provided that could be used to draft a letter to OPG.

George Frasca stated he was new on the Council. He wanted to express to the Board the amount of time and dedication this group of 7 people puts in. It has been outstanding. They have done a lot of work for the Seeley Lake community, all for no pay.

#### **Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$400,128.86. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

#### **Decision: Petition to Abandon Old Rock Creek Road (From Bonita Ranger Station Road to Downwind Drive)**

This is a petition to abandon "Old Rock Creek Road from the Bonita Ranger Station Road to Downwind Drive, located in the north one-half of Section 7, Township 11 North, Range 16 West, Missoula County, Montana."

The reasons for the request are as follows:

1. Interstate 90 crosses the roadway, making it impossible to use as a connection road.
2. New Rock Creek Road with Interstate interchange is in a superior location.
3. Dangerous – this roadway crosses Elliot Airstrip – any vehicle travel is dangerous.

The following landowners have been notified: Gary M. Lundberg; Daniel Ekstrom; Gary and Susan Salvador; Jeffrey and Marla Freeman; State of Montana; and Montana Rail Link.

Chairman Evans continued the hearing.

Chairman Evans stated that she and Greg Robertson conducted a site inspection on Tuesday, February 10, 2004. She read his e-mail report into the record. *"I will not be in attendance at the public meeting this afternoon. Pursuant to Barbara's request, I am writing in advance our findings. Yesterday, Barbara and myself visited the segment of Old Rock Creek Road that is the subject of vacation. Based on our viewing, there is no physical evidence that the road exists or that the public benefits from retaining the right-of-way. It is apparent that the right-of-way is currently occupied by I-90 improvements and the small airport that serves Rock Creek. It is our recommendation that the Board vacate that portion of Old Rock Creek Road that is the subject of the petition."* She concurred with his report. There is no road there and it does not appear that there is any way to put one there.

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

Commissioner Carey moved that the Board of County Commissioners approve the petition to abandon "Old Rock Creek Road from the Bonita Ranger Station Road to Downwind Drive located in the north one-half of Section 7, Township 11 North, Range 16 West, Missoula County, Montana." Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

There being no further business to come before the Board, the Commissioners were in recess at 1:48 p.m.

**THURSDAY, FEBRUARY 12, 2004**

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

Plat – The Commissioners signed the Plat for Kalberg Estates, a three-lot subdivision of Tract B2, COS 3907, located in the NW¼ of Section 7, T 12 N, R 19 W, and the NE¼ of Section 12, T 12 N, R 20 W PMM, Missoula County, a total area of 1.73 acres, with the owners of record being Dale A. and Connie M. Kalberg.

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ADMINISTRATIVE MEETING

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

Task Order – Chairman Evans re-signed Task Order No. 04-07-4-61-033-0 to the Missoula County Unified Government Master Contract between the Montana Department of Public Health and Human Services and Missoula County for the provision of services relating to the Public Health Emergency Preparedness and Response Program and the Communicable Disease Control and Prevention Bureau. The total amount of this Task Order shall not exceed \$195,115.00. The term will be September 1, 2003 through September 30, 2004. The document was returned to the Health Department for further signatures and handling. Note: *This contract was processed and signed in November of 2003, but was lost by the State.*

Quit Claim Deed – The Commissioners signed a Quit Claim Deed, dated February 12, 2004 between Missoula County and Riverside Development c/o Eagle Watch Development (Grantee) for property known as COS 2651 located in the SE¼ of Section 27, T 23 N, R 20 W, PMM, Missoula County. This property was acquired by Tax Deed; due to notice problems, the Tax Deed is voidable. The Deed was returned to Deputy County Attorney Michael Sehestedt for further handling.

Resolution No. 2004-018 – The Commissioners signed Resolution No. 2004-018, dated February 12, 2004, a Resolution of Intent to rezone property (east of Storehouse Way and north of Wheeler Drive) described as a portion of Lot 2 and all of Lot 3, Green Acres, Phase 2, located in the NW¼ of Section 6, T 13 N, R 19 W, PMM, from C-RR3 (Residential – four dwelling units per acre) to Windsor Park Special Zoning District (Residential).

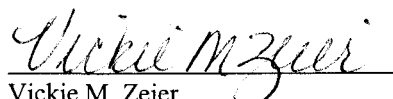
Resolution No. 2004-019 – The Commissioners signed Resolution No. 2004-019, dated February 12, 2004, a Resolution of Intent to rezone property (near the corner of Expressway and Wheeler Drive) described as a portion of Lot 1, Green Acres, Phase 2, and a portion of Canyon Creek Village, Phase 3, located in the NW¼ of Section 6, T 13 N, R 19 W, PMM, from C-RR3 (Residential – four dwelling units per acre) Canyon Creek Village PUD (Mixed-use) to Canyon East Special Zoning District (Mixed-use).


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

**FRIDAY, FEBRUARY 13, 2004**

The Board of County Commissioners met in regular session; a quorum of members was present. In the forenoon, Commissioner Evans attended a meeting of the Judicial Standards Commission held in Room 201. At noon, Commissioners Carey and Evans attended a luncheon and tour at the Fairgrounds as part of the Fair Retreat.

Claims List – Commissioners Carey and Evans signed the Claims List, dated February 6, 2004, with a grand total of \$15,612.61. The Claims List was returned to the Accounting Department.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, FEBRUARY 16, 2004**

**THE COURTHOUSE WAS CLOSED FOR THE PRESIDENTS' DAY HOLIDAY.**

**TUESDAY, FEBRUARY 17, 2004**

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, the Commissioners attended a Department Head Meeting where the new elections equipment was demonstrated.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated February 11, 2004, with the following grand totals:

- 1) \$6,354.33; and
- 2) \$4,036.25.

The Claims Lists were returned to the Accounting Department.

Claims Lists – The Commissioners signed three (3) Claims Lists, dated February 12, 2004, with the following grand totals:

- 1) \$43,643.93;
- 2) \$14.76; and
- 3) \$8,283.94.

The Claims Lists were returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated February 13, 2004, with a grand total of \$906.89. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed three (3) Claims Lists, dated February 17, 2004, with the following grand totals:

- 1) \$8,618.57;
- 2) \$30,831.66; and
- 3) \$44,566.23.

The Claims Lists were returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

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

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-020 for the Health Department, reflecting \$50.00 for a needed object code.

Resolution No. 2004-020 – The Commissioners signed Resolution No. 2004-020, dated February 17, 2004, a Resolution of Intent to Create Rural Special Improvement District No. 8844 for the purpose of maintaining one (1) fire hydrant located at the Fort Courage childcare center (Lot 2A of Herbenson tracts at T 13 N, R 19 W, PMM, Missoula County).

Request for Action – The Commissioners voted to approve a State Youth Court Grant to the State Supreme Court Administrator to continue funding of the local Juvenile Intensive Supervision Program until June 30, 2004, contingent upon an acceptable contract with the State of Montana. Missoula County will allocate \$20,180 from the District Court Fund to continue the program.

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

#### **WEDNESDAY, FEBRUARY 18, 2004**

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 in the family.

Claims Lists – Commissioners Carey and Curtiss signed two (2) Claims Lists, dated February 18, 2004, with the following grand totals:

- 1) \$2,402.17; and
- 2) \$43,168.13.

The Claims Lists were returned to the Accounting Department.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Willis W. Hintz, Missoula, as Principal for Accounting Warrant #272713, issued July 26, 2002 on the Missoula County Payroll Fund in the amount of \$695.55 (for clothing allowance), which cannot be found.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Willis W. Hintz, Missoula, as Principal for Accounting Warrant #277818, issued July 11, 2003 on the Missoula County Payroll Fund in the amount of \$695.56 (for clothing allowance), which cannot be found.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Steven D. Roney, Lolo, as Principal for Accounting Warrant #272799, issued July 26, 2002 on the Missoula County Payroll Fund in the amount of \$444.25 (for clothing allowance), which cannot be found.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

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

Agreement – The Commissioners signed a Memorandum of Agreement between Missoula County and The Parenting Place to coordinate the activities of the Health Start Council and provide research-based parenting programs to children 0 to six years old. The total amount shall not exceed \$24,125.00. The term will be October 1, 2003 through September 30, 2004, contingent upon receipt of Community Incentive Project Grant Funds by Missoula County. All other terms and conditions are set forth therein.

Form – Acting Chairman Carey signed a MT-2 Form 1 Federal Emergency Management Agency (“FEMA”) Overview & Concurrence Form which sets forth two small areas (Pattee Canyon and Country Club Lane/Orchard Avenue areas) within Missoula County where the floodplain has changed. WGM Group, Inc. will send to FEMA for approval this Form, as well as a Letter of Map Revision. The Form was returned to Tom McCarthy at WGM for further handling.

Letter – Per recommendation of the Offer Review Committee (2/17/04), the Commissioners signed a letter, dated February 18, 2004 to Jerry Hughes, Hughes/Roller City Arena, acknowledging the receipt of, and denying, his February 10, 2004 offer to purchase Lot 4, Block 11, of the Missoula Development Park. The offer was denied for the following reasons: 1) The offer is not a full price offer; and 2) Mr. Hughes’ request to defer the property taxes is counter to the purpose of the Tax Increment District.

Request for Action – The Commissioners approved the authorization of Chief Administrative Officer Ann Mary Dussault to request deferment of penalty, interest and administration fees for taxes on certain Park parcels, and to pay current and back taxes which are owed by Missoula County (for Forest Fire Protection Fees). The total cost is estimated to be under \$10,000.

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Other items included:

- 1) A discussion was held regarding updating and proceeding with the Larchmont/Summit Golf Management Contract.

#### **PUBLIC MEETING – February 18, 2004**

The Public Meeting was called to order at 1:30 p.m. by Acting Chairman Bill Carey. Also present were Commissioner Jean Curtiss, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall and County Public Works Director Greg Robertson. Commissioner Barbara Evans had a family emergency.

#### **Pledge of Allegiance**

#### **Public Comment**

None

#### **Routine Administrative Actions**

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$162,869.17. Acting Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

#### **Hearing: Application to Montana Department of Commerce HOME Program on behalf of Opportunity Resources, Inc.**

Acting Chairman Carey opened the public hearing.

This is a request to conduct a public hearing and submit an application on behalf of Opportunity Resources, Inc. (ORI), to the Montana Department of Commerce for a State HOME Grant and approve a loan in the amount of \$20,000 in County Program Income funds.

In 1999, Missoula County submitted an application to the Montana Department of Commerce, HOME Program, for assistance in development of an accessible group home on behalf of Opportunity Resources, Inc. A duplex group home, Pioneer Home I, was completed in 2001.

In Pioneer Home II, ORI plans to construct two four-bedroom units of group home type housing for low-income, severely disabled persons. The group home will be built at the same site, on property owned by ORI at Third and Howard Streets and is to replace existing group housing that is overcrowded and fails to meet the needs of residents at another facility off-site.

Jean Harte, Office of Planning and Grants, stated that OPG is bringing forward a proposal from Opportunity Resources, Inc. (ORI) in order for them to apply for grant funds from the State of Montana Department of Commerce. They plan to use the grant funds to build a duplex serving 8 individuals who have severe disabilities on property they currently own near Third and Howard Streets. The hearing today, required as part of the grant process, is to have Missoula County submit an application on behalf of ORI to the Department of Commerce. The last part of the request is to approve a loan in the amount of \$20,000 in County Program Income funds. Ken Brown from Opportunity Resources is also present today.

Ken Brown stated that he was available to answer questions.

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

Commissioner Curtiss moved that the Board of County Commissioners approve the submittal of an application on behalf of Opportunity Resources, Inc. to the Montana Department of Commerce for a State HOME Grant and approve a loan in the amount of \$20,000 in County Program Income funds. Acting Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

#### **Hearing: Resolution of Intent to Create Rural Special Improvement District (RSID) #8479 – El Mar Estates Sewer Interceptor**

Acting Chairman Carey opened the public hearing.

This is a request to create Rural Special Improvement District #8479, El Mar/New Meadows Sewer Improvements. The Department of Public Works mailed out the Resolution of Intent to Create RSID #8479. As of February 18, 2004, no letters of protest were received. Public Works certifies that inadequate protests were received and recommends the Board of County Commissioners proceed with creation of this district.

Greg Robertson stated that Public Works is requesting the Board create RSID #8479, El Mar/New Meadows Sewer Improvements. The Mullan Corridor Sewer Project is underway and the backbone system is approximately 95% complete. It is anticipated that the first phase of the project will be complete within the next three or four weeks. The next phase is to connect four identified subdivisions to the backbone. Public Works distributed the Resolution of Intent to Create to all landowners of record within the proposed district and no letters of protest were received. It is their recommendation that the Board proceed with creation of the district.

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



Commissioner Curtiss moved that the Board of County Commissioners adopt a Resolution to Create Rural Special Improvement District #8479 as presented. Acting Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

**Hearing: Resolution of Intent to Create Rural Special Improvement District (RSID) #8480 – Golden West Sewer Interceptor**

Acting Chairman Carey opened the public hearing.

This is a request to create Rural Special Improvement District #8480, Golden West Sewer Improvements. The Department of Public Works mailed out the Resolution of Intent to Create RSID #8480. As of February 18, 2004, one letter of protest was received. Public Works certifies that inadequate protests were received and recommends the Board of County Commissioners proceed with creation of this district.

Greg Robertson stated that this is the second subdivision of the four identified for Phase 2 of the Mullan Corridor Sewer Project. Public Works distributed the Resolution of Intent to Create to all Golden West landowners of records. One letter of protest was received. It is their recommendation, based on insufficient protests received, to proceed with the creation of the district.

Commissioner Curtiss asked if the RSID amount was based on the size of parcel or a flat rate for all homeowners.

Greg Robertson stated it is a flat rate for all homeowners. The cost is approximately \$1,300 for both the backbone and sub-district connections.

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

Commissioner Curtiss moved that the Board of County Commissioners adopt a Resolution to Create Rural Special Improvement District #8480 as presented. Acting Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

**Hearing: Carlton Heights-Maple Creek Addition #2 (5 lots on 28.31 acres) – west of U.S. Highway 93, south of Carlton**

Acting Chairman Carey stated that this item may not proceed in the usual fashion and the developer's representative would like to speak on the matter.

Nick Kaufman, WGM Group, Inc., developer's representative, stated that they have been working with the Maclay family on this piece of property for several years. There was an initial proposal for about 70 lots based on information collected that looked reasonable and feasible. After a neighborhood meeting where neighbors cautioned about minimum water supply, effluent from septic systems and traffic on Sun Valley Road, they hired Land and Water Consulting to look at nitrate and well issues. As a result, the entire plan was pulled, expect for four lots. The proposal the Board is reviewing is to add four additional lots to a lot created with the original Carlton Heights-Maple Creek Addition, at the end of the existing infrastructure approved with that subdivision. They have been working with Fish, Wildlife and Parks and the fire department to address the issues in the staff report. He is prepared to give a presentation today. However, on behalf of the developer, they are requesting a two week extension on this project and grant an extension of the review period to March 4, 2004. The reason for the request is to allow the developer the opportunity to review and respond to the concerns raised in the staff report. It takes time to address the concerns raised. If the Board wants to take testimony today, he would be happy to give a brief presentation on the proposal. The first item is to determine if the Board of County Commissioners is willing to grant an extension.

Mike Sehestedt stated the first issue the Board needs to decide is if they are willing to grant the extension. If the answer is affirmative, then given the fact there are a number of people present to speak on the issue, they have to decide if they would like to open the hearing to receive testimony, then continue the hearing for two weeks.

Monte Sipe, Office of Planning and Grants, stated that he would like to be able to check his schedule, the extension may create some conflicts with other cases he is dealing with. The applicant's representative has indicated the timing is somewhat flexible. He would like to be able to have sufficient time to address any modifications.

Nick Kaufman stated he had no problem with fitting this into Monte's schedule and if it required re-advertising the hearing, all the costs associated with that would be covered.

Commissioner Curtiss stated that the law requires the Board to give a developer a chance to mitigate problems that have been identified.

Commissioner Curtiss moved that the Board of County Commissioners grant the extension as long as it works with Monte Sipe's schedule.

Monte Sipe stated there are a quite a few people who would like to speak on the subject. He suggested having them sign their name and address on a sheet of paper and he will send a postcard to them for the specific date when this issue will be addressed.

Mike Sehestedt stated that because of the deadlines in Subdivision Regulations, if this is extended beyond the approval deadline without the developer's consent, it could be a major issue.

Monte Sipe stated the current deadline, at the request of an extension at Planning Board presented by the developer, is February 19, 2004.

Mike Sehestedt stated the request presented in writing today is until March 4, 2004. Action needs to be taken by then or agreement to go beyond that date must be given by the developer.

Acting Chairman Carey stated the developer's representative just agreed to that, if necessary.

Nick Kaufman stated the developer would be willing to agree to extend this to the next hearing date after March 3, 2004, which would be March 10, 2004. Monte does need time to review the modifications. Sometime during the next four weeks would be acceptable.

Monte Sipe stated that he has some other issues in process that might impact the timing. He needs to look at his schedule to see when this might be rescheduled. There will be new information coming from the applicant which he will need time to review. He would be more comfortable with four weeks.

Colleen Dowdall stated that if the Board sets a date certain, the hearing does not need to be re-noticed. If a date certain is not set, it has been her experience that when the new date arrives, it will need notification, which would then take approximately three more weeks. It would be best if the Board chooses a date certain.

Acting Chairman Carey stated that the developer's representative is willing to make a presentation on the current proposal. The problem is that after mitigation of identified issues, it probably won't be the same proposal presented today. It might not be the best use of time to sit through a proposal which won't be valid when the hearing is rescheduled. However, if some people might not be able to attend the rescheduled meeting, and would like to state their position in general, that would be acceptable.

Mike Sehestedt stated the Board could open the hearing and continue it to a date certain. Acting Chairman Carey's mention about this not being the proposal before the Board is well taken. People might have an objection to particular aspects of the design that may be addressed with the mitigations made.

Nick Kaufman stated that the extension could be until March 17, 2004, but he would like to have this addressed as soon as possible.

Monte Sipe stated that the modifications submitted will make a difference and it puts him in a crunch situation as he doesn't know what those modifications will be.

Nick Kaufman stated he would change the letter to request a four week extension to March 17, 2004. The water supply system approved with the original development will be installed within the next week. Staff, the Board and the fire department do not need to hear promises anymore, they need to see a development agreement and things in place to mitigate the issues. He is confident that a fair portion of them can be mitigated. The switchback grades are correct and within County standards. Important open space has already been identified and Fish, Wildlife and Parks feels there is more that needs to be identified, so they need to work together to save the most critical elk habitat. There is an alternate building site that may be removed and set aside as riparian area. Language needs to be worked out with the fire department for fire sprinkler systems. A land set aside may also be designated so density is not located in an area that is inappropriate with the growth policy. Those are some of the main issues and he felt substantial progress on them could be made between now and March 17, 2004.

Commissioner Curtiss amended her motion to grant an extension to March 17, 2004 for the hearing on Carlton Heights-Maple Creek Addition No. 2. Acting Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Acting Chairman Carey stated that he was inclined to hear public testimony today as well.

Acting Chairman Carey opened the public hearing.

Gordon Geiser, Florence Rural Fire District Chief, stated there were some letters from the fire district in the packet. They had been asked to comment on Phase 1 and Phase 2. Their comment on Phase 1 included roads to County standards and a water supply system for fire suppression. In the meantime, Nick mentioned residential sprinkler systems and they are in favor of that. That would take care of 50% of the problem. The other half is the fact that this is in an urban interface area on a steep side slope. The fire district's concern is that if something happens along King Road, any houses above there could be in danger. That still leaves the request for suppression water, not for a fire that starts inside a structure, but a fire that starts outside a building. He wanted to make sure the district was on record regarding those issues.

Monte Sipe stated that Gordon mentioned that roads should be built to County standards, however, there are a substantial number of variances to standards requested for grade percentage, road width, etc.

Gordon Geiser stated that the Florence Rural Fire District is a split-County district with 65% in Ravalli County and 35% in Missoula County. The major subdivisions they have commented on recently are in Ravalli County. The assumption was that road standards were fairly uniform from County to County, but that is not the case. They have checked the road with their current equipment and they are fairly comfortable with its access. The water for fire suppression is the bigger issue.

Nick Kaufman stated that a hydrant to fill watertenders is being proposed which will serve the greater area, not just this subdivision. It gives the fire department a central location to fill their watertenders.

Gordon Geiser stated that is the current proposal and with the extension, it will provide more time to further assess the proposal. The reason they sent the negative response for Phase 2 is that nothing exists on the ground that can be used.

Commissioner Curtiss stated that this subdivision is a good distance from the main road up other steep, winding roads. Would they need water provided at the subdivision site as well.

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Gordon Geiser stated the original request was to have water at the site. The developer said he was having trouble providing the amount of water required and asked if there were alternate proposals the fire district would accept. One alternative discussed was a hydrant at the location pointed out. It was assumed that something would happen at the alternative site. When Phase 2 was presented, nothing had happened as outlined in Phase 1, so the fire district took the stand to deny Phase 2 until there was some progress on the initial requirement.

Del Zuehlendorf stated he lived on Maple Lane below this proposed subdivision. He had several comments that seems to have been addressed in the Planning Office report. Well water is a crucial issue. He had pictures of road wash out on Sun Valley Road in previous years. Accessibility is another issue. The area was zoned ZD 40 in 1976 at one house, one family, per five acres. He does not like to see good agricultural land split. There are also elk habitat issues. At a later date when another proposal comes before the Board, he would like to comment further.

Ben S. Lane, 19701 King Road, asked where the water would come from to serve the hydrant mentioned.

Nick Kaufman stated the Maclay ranch has water rights upstream and the irrigation system is gravity fed, not from wells. The hydrant will be fed from part of the existing water supply rights on the ranch.

Michelle Kuntz stated that on the map provided it showed her property bordering King Road, but that is incorrect. She lives at 6676 Sun Valley Road. This is first meeting she has been able to attend. Her biggest concern is the water issue. She has a shared well system that services three residences. She installed a well in 1995 which is 275 feet deep and provides 3 gallons a minute, with a good amount of storage; but the installation cost \$11,000. A previous owner had drilled a dry well and the people above her, that share the common well, had drilled 4 or 5 dry attempts. The water table cannot support any large development. The wildlife habitat is another critical issue. There is usually a herd of 50 elk in the area and this is their prime winter range. It is also a prime flyway for geese, whooping cranes, etc. Another issue is the roads. When work was done on the original subdivision, the dust was horrible. The developer was appealed for dust abatement to no avail. Residents were forced to take care of the problem out of their own pockets. During roadway work, the developer added dirt over the oiled surface. Now that dirt is washing into her yard, creating a ditch she must go over to get to her driveway.

Ben Lane stated that during many months of the year there is no water in the irrigation ditch that will feed the hydrant. He would like a little more explanation.

Nick Kaufman stated that he would not solve that problem today. It will be solved by the time the new proposal is presented on March 17, 2004. There are perennial streams on the property.

Monte Sipe stated that there is not an issue with water on the property. There is a perennial stream and water flows, but down below this property in the previous subdivision there are two diversion ditches that supply the pivot. While irrigation is occurring, there is very little or no water downstream in Maple Creek.

Nick Kaufman stated that he would address that issue with the fire department to make sure the water promised is available.

Bud Clayton stated that he has property on Maple Lane. Sun Valley Road is his main concern. Right now in some spots that road is only 12 feet wide and is washing out. Every year it washes out about 2 feet wide by 1.5 feet deep, limiting the road to one lane traffic. Having water below this property to use for fighting fire up in the hills is impossible. Within 100 feet of his house, there are four wells that push water up the mountain to the houses on King Road. There is no water up there at all. Wells have been drilled 400 feet deep and all they hit are trees. Again, his main concern is the road.

Jerry Slingsby stated that one of the primary issues brought before the Planning Board is the cumulative impact of subdivisions in the area. As Mr. Kaufman mentioned, a plan was presented to the community with 75 or 76 homesites. What still isn't clear is the future development within the area. Right now, the proposal is for an additional four lots. The Board should ask the developer to talk about future development in the area. Many residents are concerned about future plans. Another huge issue is the impact on wildlife. Development on both the north and south ends squeezes the elk habitat. For the first time in 19 years, he has witnessed elk being driven across Highway 93 and across the river. Another critical issue is the access road. Sun Valley Road does not meet subdivision standards. In some places it is only 18 feet and with further wash out, it may be only 12 feet wide. It also exceeds 8% grade. An alternative route mentioned is Carlton Creek Road, but between King Road and Jones Road, it exceeds 15% grade. Another route suggested was to put a road from the subdivision to McClain Creek Road. That road would dissect what FWP has identified as elk calving and winter range area. The Board cannot deny a subdivision based on water issues. However it has been an issue in the area for many years. He lives on King Road and his well is 1,800 feet from his house, down by Maple Lane. Active wells any closer to homes up there don't exist. The concern is that future well development in the area could have an impact on existing sources of water. The fire issue is another concern. He suggested that the Board drive out and look at the area from the context of past fire seasons. Sprinkler systems installed in the homes are a good idea, but as Gordon Geiser indicated, the bigger problem is a fire that starts outside a dwelling. If a fire starts in this draw, it will have a chimney effect. During a dry season like last year, the fire district would probably just let the fire burn as it would be too dangerous to fight. The prevailing winds blow in a southern direction. If a fire starts in that draw, it would spread to existing residences on King Road.

Michelle Kuntz stated that the historic usage of irrigation on that agricultural land has existed for over 100 years. The majority of the water rights belong to the Maclays. When run-off and drainage cease, there is no water in the ditches below this property. If anything is done to divert the flow of surface water it will have an impact on the wells below this property.

John Vore, Wildlife Biologist with Montana Fish, Wildlife and Parks in the Bitterroot Valley, stated that this is important wildlife habitat, particularly elk habitat. FWP's concern is the cumulative effect of development in the area. He looked forward to working with the developer and his representative on the wildlife issues.

Nick Kaufman stated that during the neighborhood meeting there were concerns about the road, water and other issues that lead to him taking 71 lots off the proposal, which was a first in his professional career.

Commissioner Curtiss asked where the 71 lots had been located.

Nick Kaufman pointed out the properties that have been subdivided on Sun Valley Road, most of them without review. There is a five lot commercial subdivision but none of those lots have been sold. The squeeze on habitat comes from development on the Shrader Ranch on the north side. The Maclay Ranch has about 18 lots of 10 acre tracts. Mr. Maclay did a boundary relocation to pull them out of the draw and place them against the hill. There is a 5 lot subdivision, none of which has been developed and a boundary relocation was done sensitive to topography. The wildlife migratory route is in a different location. In the 3,500 acres, there is a five lot subdivision with no lots sold and 5 lots by boundary location. This proposal is to take a corner of the property and put homes there and around the agricultural grounds on the opposite face, but keep the rest in agriculture, which helps the ground water recharge. After further study, it was determined that there was not sufficient water available so those lots were taken off the proposal, along with their vehicle trips, water and sewer needs. There is water in this area and an approved and built road. They are asking to extend that road to get four more homes to create cash flow to continue planning on the ranch. Sun Valley Road may not be the primary access. A road was planned and a portion built that comes down to McClain Creek Road. The County just opened McClain Creek all the way back to the Forest Service boundary, through all the wildlife habitat that neighbors have mentioned. They are suggesting making a connection between King and Sun Valley over to McClain so there are two ways out which would be a benefit from a fire standpoint. Part of the master plan shows a connection on a road the County just opened up. They plan to install residential fire sprinklers, they have been discussing that for a long time with the Missoula Rural Fire District. He will bring back a plan to mitigate the urban/wildland interface. The plan being discussed originally started at 75 lots and was mitigated back to 4 additional lots. The neighbors are saying they don't want 75 lots and they also don't want 4 more, and don't connect County roads. He will be able to mitigate some of the concerns raised, but not all of them. He wants to bring back a plan that mitigates items that can be addressed so the Board can make a good decision.

Monte Sipe asked Nick if Mr. Maclay had expressed any plans to extend Maple Creek Road further to the west. Some of the concerns with the extension of the road are continuing variances to a dead end road. Those were necessary for the original five lot subdivision. A lot of those same variances are being required for this subdivision. He has seen previous plans which showed the road extended.

Nick Kaufman stated that was not contemplated. There are other roads that could provide additional access, so in the event of fire there are three ways out, plus residential sprinkler systems plus mitigation in terms of clearing brush to make sure the wildland/urban interface works. As everything gets picked apart and mitigation is applied in pieces, it seems that it ends up with nothing, which is what people seem to want – nothing. Something is going to happen on the Maclay Ranch and they are trying to figure out the places with the least impact and how to do that while working on a comprehensive plan.

Jerry Slingsby stated that his opinion of the situation has been mis-characterized. There were strong objections to a larger subdivision. The four lot subdivision is fine, but what happened to the other plan for 75 lots. He would withdraw his objections if either Mr. Maclay or Mr. Kaufman would provide a clarification as to what the future subdivision plans are throughout the area. Again, the question is cumulative impact. He is not against this small subdivision on its own, but if this is the first step of a much larger expansion, then he has objections. They have asked for a clarification of future plans since the very beginning. They would like to know up front what the overall plans are so they can be assessed for impacts to roads, wildlife, water, etc. This is just a small picture.

Bud Clayton stated that a road has already been built that cost quite a bit of money that could go to a much larger subdivision. He did not think that Mr. Maclay would just abandon that road. The other roads mentioned are just cow trails, a fire truck couldn't get up them.

Monte Sipe stated that the road built was an extension of Lamar Trail which has been improved and was part of the review for the previous subdivision.

Nick Kaufman stated that the cow trail would let people get out in case of a fire. He has observed the recent planning for Lolo and the Mullan Road corridor. A grid road plan has been adopted for those planning area. Mr. Maclay is not doing anything different. Public Works has seen the plans for every road Mr. Maclay has built. There are plans to pull McClain Creek out of the riparian area and connect with Sun Valley, a positive for fire protection and future planning.

Acting Chairman Carey stated this issue will be back before the Board on March 17, 2004. He recessed the public hearing until that time.

There being no further business to come before the Board, the Commissioners were in recess at 2:30 p.m.

#### THURSDAY, FEBRUARY 19, 2004

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was out of the office all day February 19<sup>th</sup> and 20<sup>th</sup>. At noon, Commissioners Carey and Curtiss attended the 2004 State of Missoula Luncheon held at the Doubletree. Commissioner Carey presented Chairman Evans' "State of the County" address as she was unable to attend.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated February 18, 2004, with a grand total of \$10,291.48. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

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

BOOK 004 PAGE 0006

Letters – The Commissioners signed two letters, dated February 17, 2004, regarding the State's Addictive and Mental Disorders Division ("AMDD") approval of St. Patrick Hospital's application to be an ACT provider. Letters were sent to the following:

- 1) To Joan Cassidy, Director, DPHHS (AMDD), Helena, Montana, setting forth Missoula County's concerns about the process used to grant the approval and respectfully requesting that AMDD reconsider its decision since there is no objective basis for determining the need to expand the number of ACT providers; and
- 2) To Dorothy Lescantz, Director, Addiction Treatment Programs, St. Patrick Hospital, Missoula, enclosing the aforementioned letter to DPHHS, and reiterating there is no need for a second ACT program in Missoula at this time. The Commissioners hope that the staffs from the Office of Planning and Grants and from the hospital will be able to meet to discuss this issue.

Resolution No. 2004-021 – Approved at the Public Meeting held on February 18, 2004, Acting Chairman Carey and Commissioner Curtiss signed Resolution No. 2004-021, dated February 18, 2004, a Resolution to Create Rural Special Improvement District ("RSID") No. 8479 (El Mar Estates Sewer Interceptor), and financing the costs through the issuance of RSID Bonds secured by Missoula County's RSID Revolving Fund and establishing compliance with reimbursement bond regulations under the Internal Revenue Code.

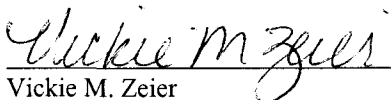
Resolution No. 2004-022 – Approved at the Public Meeting held on February 18, 2004, Acting Chairman Carey and Commissioner Curtiss signed Resolution No. 2004-022, dated February 18, 2004, a Resolution to Create Rural Special Improvement District ("RSID") No. 8480 (Golden West Sewer Interceptor), and financing the costs through the issuance of RSID Bonds secured by Missoula County's RSID Revolving Fund and establishing compliance with reimbursement bond regulations under the Internal Revenue Code.

Signature Page – The Commissioners reviewed and signed one (1) Claims Signature Page for the Larchmont Golf Course Accounts Payable Invoice Register dated February 9<sup>th</sup> and February 11, 2004, in the amount of \$12,869.40. The Signature Page was returned to the County Auditor.

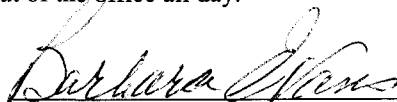
The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, FEBRUARY 20, 2004**

The Board of County Commissioners did not meet in regular session. Commissioner Carey was in Kalispell attending a Mental Health Board meeting. Commissioner Curtiss was out of the office all day.



Vickie M. Zeier  
Clerk & Recorder



Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, FEBRUARY 23, 2004**

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

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated February 18, 2004, with a grand total of \$3,801.23. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtiss signed two (2) Claims Lists, dated February 19, 2004, with the following grand totals:

- 1) \$994.95; and
- 2) \$55,458.83.

The Claims Lists were returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtiss signed three (3) Claims Lists, dated February 20, 2004, with the following grand totals:

- 1) \$24,584.77;
- 2) \$700.30; and
- 3) \$1,701.40.

The Claims Lists were returned to the Accounting Department.

Indemnity Bond – Acting Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Walter Graf, Missoula, as Principal for Accounting Warrant #267397, issued August 24, 2001 on the Missoula County Payroll Fund in the amount of \$738.41 (for wages for pay period 17-2001), which was destroyed.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 04 – CY2004 - Pay Date: February 20, 2004. Total Missoula County Payroll: \$898,172.40. The Transmittal Sheet was returned to the Auditor's Office.

**TUESDAY, FEBRUARY 24, 2004**

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

BOOK 004 PAGE 0307

Claims Lists – Commissioners Carey and Evans signed two (2) Claims Lists, dated February 20, 2004, with the following grand totals:

- 1) \$43,792.14; and
- 2) \$8,121.60.

The Claims Lists were returned to the Accounting Department.

Claims Lists – Commissioners Carey and Evans signed three (3) Claims Lists, dated February 23, 2004, with the following grand totals:

- 1) \$5,768.25;
- 2) \$21,998.51; and
- 3) \$180,924.14.

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 No. 2004-025 – The Commissioners signed Resolution No. 2004-025, dated February 24, 2004, a Budget Amendment for Risk Management, reflecting a transfer of \$150,000 from Risk Management's separate Trust to help pay higher than expected claims costs. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-021 for the Health Department, reflecting \$200.00 (5 items) for needed object codes.

Agreements – The Commissioners signed two Agreements with the Missoula Redevelopment Agency, dated February 24, 2004, To Remit Unused Portion of Tax Increment Urban Renewal Monies for Fiscal Year 2003-2004 as follows: 1) \$36,837.29 to be released to the taxing jurisdiction, Missoula County Board of Commissioners for Countywide Schools; and 2) \$45,327.24 to be released to the taxing jurisdiction, Missoula County Board of Commissioners. All other terms and conditions are set forth therein.

Resolution No. 2004-023 – The Commissioners signed Resolution No. 2004-023, dated February 24, 2004, a Resolution to Correct Resolution No. 2004-17, which contains an incorrect legal description. The corrected version reads: "A Resolution to rezone a portion of the property (Kalberg) described as COS 3907 Tract B2, located in Section 7, T 12 N, R 20 W, PMM, from C-RR1 (Residential – 1 Dwelling Unit Per Acre) to C-RR2 (Residential – 2 Dwelling Units Per Acre)".

Letter – Per recommendation of the Office of Planning and Grants at their meeting on February 23, 2004, the Commissioners approved and signed a letter, dated February 26, 2004 to Nick Kaufman of WGM Group, Inc., approving his request (as representative for B&E Development) to amend the Windsor Park Subdivision preliminary plat and phasing plan. The amendment relates to a modification in the storm water detention method being used.

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

Tax Abatement Requests – At the Clerk & Recorder's Departmental Meeting with Vickie Zeier, held on February 24, 2004 the Commissioners approved requests and/or letters regarding the following:

- 1) To approve a request from Larry E. Coufal to refund penalty and interest paid for tax ID #3259007;
- 2) To approve a request from Benjamin News Group to refund taxes paid for Title #G160923;
- 3) To deny a request from Kereen Monteyne to waive penalty and interest for mobile home tax ID #90424340;
- 4) To approve a request from Margot Hart to refund taxes and fees paid for Title #E221467;
- 5) To approve a request from Robert Efinger to refund penalty and interest paid for tax ID #2482506; and
- 6) To approve the abatement of the 2004 tax bills that were not assessed the Swan Valley fire service fee.

#### **WEDNESDAY, FEBRUARY 25, 2004**

The Board of County Commissioners met in regular session; all three members were present. In the morning, Commissioner Curtiss attended a Heart Walk Breakfast held at the Wingate Hotel.

Claims List – The Commissioners signed the Claims List, dated February 23, 2004, with a grand total of \$8,276.41. The Claims List was returned to the Accounting Department.

Plat and Agreement – The Commissioners signed the Plat and Development Agreement for Hillberry Center, a subdivision located in the SW¼ of Section 26, T 12 N, R 20 W, PMM, Missoula County, a total area of .91 acres, with the owners of record being Lolo Creek Holdings, LLC (Michael R. and Sandra Sandry). The Development Agreement, dated February 6, 2004 relates to the control of noxious weeds in accordance with the Montana County Weed Control Act and the Missoula County Noxious Weed Management Plan.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming the University of Montana, Missoula, as Principal for Missoula County Public Schools Warrant #92153, issued July 17, 2003 on the Missoula County Student Fund in the amount of \$25.00 (for room rental), which cannot be found.

BOOK 004 PAGE 0303

CHIEF ADMINISTRATIVE OFFICER MEETING

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

Modified Agreement – Chairman Evans signed a First Modification Agreement to Contract No. 20043DMVL0014, Domestic Violence Services, between the Missoula County and the Montana Department of Public Health and Human Service (“DPHHS”), which extends the timeline to a year rather than  $\frac{3}{4}$  of a year (from October 1, 2003 to September 30, 2004) for the Missoula County Domestic Violence Program (YWCA Shelter Grant). The total amount of the grant remains at \$55,000. All other terms and conditions remain as previously stated and/or modified. The document was returned to Leslie McClintock in the Office of Planning and Grants for further handling.

Agreement – The Commissioners signed a Memorandum of Agreement between Missoula County and Family Basics/WORD for the purchase of research-based prevention services for children from 0 to six years old (through the Parents as Teachers curriculum, a best practice parent education program, to residents of Mountain Home Montana). The total amount shall not exceed \$17,710.00. The term will be October 1, 2003 through September 30, 2004. All other terms and conditions are set forth therein.

Memorandum of Understanding – Chairman Evans signed a Memorandum of Understanding and Cooperation Among Participating Partners (March 2004) for the Grant Application to the Office on Violence Against Women for the Missoula County YWCA Planet Kids Supervised Visitation Safe Exchange Center. In 2002 a planning grant was awarded; there is no match required. The grant period is anticipated to be October 1, 2004 through September 30, 2006. All other terms and conditions are set forth therein. The document was returned to Melissa Wangler in the Office of Planning and Grants for further signatures and handling.

Agreements – The Commissioners signed two (2) Sanitary Sewer Grant Program Agreements for Assistance to Owner-Occupied Households Secured by Real Property, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. The Agreements provide funds for sewer improvements and connection to the City of Missoula municipal sewer system, as follows:

- 1) Agreement for partial assistance, dated February 18, 2004, with Joseph Leroy and Sandra Christiansen, 109 Gold Nugget Road; and
- 2) Agreement for full assistance, dated February 13, 2004, with Keith Alan and Kelly A. McDaniel, 4195 Placer Lane.

All sewer development fees and on-site connection costs and fees are as set forth therein.

Other items included:

- 1) The Commissioners approved an extension request for a Missoula County employee who has exceeded her limit of 160 hours of donated sick leave per calendar year. The employee was granted an extension to use what is necessary up through March 26, 2004.
- 2) The Commissioners pre-approved a FY 05 request for reservations of funds for the remainder of “Commitment to the Core” for the Courthouse 4<sup>th</sup> floor remodel (in the amount of \$300,000) and the Communications Backbone (in the amount of \$250,000).
- 3) The Commissioners were given an update on County Parks Issues and Projects by Lisa Moisey, County Parks Coordinator.

**PUBLIC MEETING – February 25, 2004**

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Jean Curtiss, Commissioner Bill Carey, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall, County Clerk & Recorder/Treasurer/Surveyor Vickie Zeier and County Public Works Director Greg Robertson. Ty Anderson, Citizen Member of the Planning and Zoning Commission was also present. Clem Work, Citizen Member of the Planning and Zoning Commission was ill and unable to attend the meeting.

**Pledge of Allegiance****Public Comment**

None

**Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$411,984.31. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Hearing (Planning and Zoning Commission): Zoning District #40 Variance – Usage (Lugibihl)**

This matter was withdrawn.

**Hearing (Planning and Zoning Commission): Zoning District #40 Variance – Density and Setback (Vaillancourt)**

Chairman Evans recessed the meeting of the Board of County Commissioners and called the meeting of the Planning and Zoning Commission to order. Members present were Commissioner Barbara Evans, Commissioner Bill Carey, Commissioner Jean Curtiss, County Clerk & Recorder/Treasurer/Surveyor Vickie Zeier, County Public Works Director Greg Robertson and Citizen Member Ty Anderson. Citizen Member Clem Work was ill and unable to attend the meeting.



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Mark Landkammer, Office of Planning and Grants, presented the staff report.

This is a request by Mavis Vaillancourt, on property owned by David and Linda Truman, for a variance to maximum density standards, setbacks and lot coverage, in order to subdivide approximately one acre from the parent parcel, which is approximately 7 acres.

This property is located in a rural residential neighborhood which is zoned ZD #40 and is approximately 7 acres in size. There is a residence on the east of the property along with some accessory buildings. There is also an existing mobile home with some outbuildings located toward the western edge of the property. The mobile home has been rented to various people over the years. The Trumans, who are owners of the property, are proposing to divide one acre, including the mobile home, from the parent 7 acre parcel in order to sell it to the current renter of the mobile home, Mavis Vaillancourt. This would not represent an increase in density because no additional buildings are being proposed.

The mobile home has a separate address at 5880 Sun Valley Road and has its own septic and utilities. The request for a variance from maximum density standards comes from the fact that there is, and would continue to be, two houses on approximately 7 acres where the Zoning District allows one dwelling unit per five acres. This original property was 52 acres, which was recently divided into 11 homesites. Had this proposed subdivision been requested at that time, it could have been completed as part of that project.

The mobile home has been at its current location since 1986 and is about 40 feet from the front property line. The applicants are requesting a variance from front yard setbacks in order to alleviate a non-conformity as to setbacks. The applicants are also requesting a variance from building lot coverage. ZD #40 allows a maximum of 5% building coverage. On a one-acre lot, which is 43,560 square feet, the maximum floor area for buildings would be approximately 2,100 square feet. The applicants are concerned that if a larger mobile home is placed on the property, along with a garage and possibly a small barn or shed, the maximum building coverage would quickly be exceeded. The applicant is proposing a variance to allow for up to 50% building coverage.

The Planning and Zoning Commission will hold a public hearing and make a recommendation to the Board of County Commissioners. The Board of County Commissioners will then make a determination to accept or reject the recommendation of the Planning and Zoning Commission.

The recommended language for a motion does not specify a number for the maximum percent of building coverage. That number should be specified in the motion. The applicants have requested up to 50%. There were no objections from the public or agencies contacted. Greg Robertson requested that access be from Sun Valley Road, which it currently is and would continue to do so. Staff is recommending approval of the request.

Chairman Evans opened the public hearing.

Dave Truman stated that he and his wife purchased this property a few years ago. It is their understanding that a while back, this piece of property was a showcase property for the Bitterroot valley. They would like to get it back to the way it used to be. They would like to see this approved so the sale can go through and have funds available to fix the property up.

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

Commissioner Curtiss stated that the request today is for variances to the zoning requirements. Would the division of the property happen at another time?

Mark Landkammer stated that was correct. The main variance from the density standard would allow the subdivision process to go forward. Any conditions would be placed on the property during subdivision review.

Commissioner Curtiss stated that if the lot coverage variance is approved, would that apply to both lots.

Mark Landkammer stated he has been treating the variance requests on just the one acre piece.

Commissioner Curtiss stated that 50% lot coverage seemed like too much, but would be willing to go 30% rather than leaving it open and saying more than 5%. Thirty percent would be about 15,000 square feet for a house, a garage and outbuildings. She asked the applicants if 15,000 square feet would be enough coverage.

Mavis Vaillancourt stated that 30% lot coverage was acceptable.

Commissioner Carey stated for the record that an e-mail was received from Vickie Mittman, 6500 Sun Valley Road. She was concerned that if this was approved by the Board of County Commissioners, it would seem that others in the area would want to do the same thing at some time in the future.

Commissioner Curtiss stated that the difference is that this already exists on the ground.

Colleen Dowdall stated the two structures already exist. If someone else wanted to do this in the future, they would also have to come before the Board and receive approval, so each instance would be reviewed on an individual basis and it may not meet the criteria for granting variances. These variances only apply to the proposed one acre parcel, it is not a change of standards within the district.

Ty Anderson stated the request was just for the variances, not the subdivision.

Chairman Evans stated that was correct. She had not been to look at this parcel, but felt the 30% figure seemed arbitrary.

Ty Anderson asked how two houses ended up on 7 acres when the requirement would be 10 acres for two houses.

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Colleen Dowdall stated that the existing condition may have pre-dated the zoning or it could have been a remainder of a subdivision.

Mark Landkammer stated his understanding was that the 7 acres was originally a piece of a greater 52 acre parcel that was subdivided.

Tim Worley, Office of Planning and Grants, concurred with Mark Landkammer. This was part of a larger Certificate of Survey and there was a common boundary relocation which created this parcel the way it is.

Vickie Zeier moved that the Planning and Zoning Commission recommend approval of the variances from Zoning District #40 to allow the applicant to exceed maximum density standards, reduce setbacks and allow no greater than 30% lot coverage on a parcel located at 19655 Old Highway 93 West, legally described as Tract 2A of COS 5120. Commissioner Curtiss seconded the motion.

Chairman Evans stated that she would prefer if the variance for lot coverage was done as a separate motion.

Vickie Zeier stated that she would remove the lot coverage portion from her motion.

Commissioner Curtiss stated that her second to the amended motion would stand.

The motion carried on a vote of 6-0.

Vickie Zeier moved that the Planning and Zoning Commission recommend approval of the variance from Zoning District #40 to allow no greater than 30% lot coverage on a parcel located at 19655 Old Highway 93 West, legally described as Tract 2A of COS 5120. Commissioner Curtiss seconded the motion. The vote on the motion was tied at 3-3 (Commissioner Carey, Commissioner Curtiss and Vickie Zeier voted to approve; Commissioner Evans, Ty Anderson and Greg Robertson voted to deny). The motion failed.

Mike Sehestedt stated that on a tie vote, the motion fails. The outcome of the failed vote is that Ms. Vaillancourt is limited to 5% building coverage as allowed in the zoning standards. By allowing lot coverage at 30%, this would allow as much coverage on one acre as the zoning standards would allow on a five acre parcel. The Commission needs to discuss this to come to some figure they can agree on.

Mark Landkammer stated that the intent of the 5% limitation best suited itself to large tracts of land. The rule probably did not anticipate one acre tracts. He believed it would be fair to allow more than 5% lot coverage on one acre tracts.

Mavis Vaillancourt stated that she would like a little more building coverage so that she could possibly replace the existing mobile home with a larger one and construct a garage and perhaps some outbuildings. She understands that this is a rural area and she needs to be considerate of her neighbors. She would like a percentage that would allow her room to expand in the future and still be respectful of the neighbors. She was not sure what figure to use and had requested 50%. If the Board feels 30% would be better, she would accept that.

Chairman Evans stated that she thought the request was reducing the coverage from 50% to 30% instead of increasing it from 5% to 30%. She would support the increase to 30%.

Chairman Evans left the meeting temporarily.

Commissioner Carey stated that Chairman Evans had changed her vote to approve the variance and asked if there was a change from the other two nays.

Ty Anderson asked what the square footage would be?

Mike Sehestedt stated that 30% of one acre would be in excess of 12,000 square feet.

Ty Anderson stated that he would change his vote.

Vickie Zeier moved that the Planning and Zoning Commission recommend approval of the variance from Zoning District #40 to allow no greater than 30% lot coverage on a parcel located at 19655 Old Highway 93 West, legally described as Tract 2A of COS 5120. Commissioner Curtiss seconded the motion. The motion carried on a vote of 5-1 (Greg Robertson opposed).

There being no further business to come before the Planning and Zoning Commission, they were in recess.

Commissioner Carey reconvened the meeting of the Board of County Commissioners.

Commissioner Curtiss moved that the Board of County Commissioners accept the recommendation of the Planning and Zoning Commission and approve a request by Mavis Vaillancourt on property owned by David and Linda Truman for a variance to maximum density standards and setbacks and lot coverage of up to 30%, in order to subdivide approximately one acre from the parent parcel, which is approximately 7 acres. Commissioner Carey seconded the motion.

Chairman Evans returned to the meeting.

The motion carried on a vote of 3-0.

#### Bid Award: Two Fairway Mowers (Larchmont)

Dan Smith, Superintendent at Larchmont Golf Course, presented the staff report.

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Bids for two Fairway Mowers were opened at 10:00 a.m. on February 9, 2004, with the following results:

<u>BIDDER'S NAME</u>	<u>BID TOTAL</u>
Green Image (Triple W Equipment)	\$81,480.00
Trade Ins (Toro)	\$12,900.00
Trade Ins (John Deere)	\$16,095.00
<b>TOTAL COST</b>	<b><u>\$52,485.00</u></b>
Midland Implement	\$60,486.00
Trade Ins (Toro)	\$ 5,000.00
Trade Ins (John Deere)	\$ 2,400.00
<b>TOTAL COST</b>	<b><u>\$53,086.00</u></b>
Turf Care	\$74,250.00
Trade Ins (Toro)	\$ 8,500.00
Trade Ins (John Deere)	\$ 8,500.00
<b>TOTAL COST</b>	<b><u>\$57,250.00</u></b>

Staff recommends the bid be awarded to Green Image (Triple W Equipment) in the amount of \$52,485.00.

Commissioner Curtiss asked if the golf course had experience with this company.

Dan Smith stated they have a relationship with this company, they represent John Deere equipment in Missoula. He also stated for the record that the bid amount was under budget.

Commissioner Curtiss moved that the Board of County Commissioners accept the bid for two Fairway Mowers for Larchmont Golf Course from Green Image in the amount of \$52,485.00 as it appears to be the lowest and best bid. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Bid Award: Two Tri-Plex Greens Mowers (Larchmont)**

Dan Smith, Superintendent at Larchmont Golf Course, presented the staff report.

Bids for two Tri-Plex Greens Mowers were opened at 10:00 a.m. on February 9, 2004, with the following results:

<u>BIDDER'S NAME</u>	<u>BID TOTAL</u>
Green Image (Triple W Equipment)	\$60,590.00
Trade Ins (John Deere)	\$17,185.00
<b>TOTAL COST</b>	<b><u>\$43,405.00</u></b>
Midland Implement	\$42,212.00
Trade Ins (John Deere)	\$ 2,400.00
<b>TOTAL COST</b>	<b><u>\$40,612.00</u></b>
Turf Care	\$44,035.00
Trade Ins (John Deere)	\$ 5,500.00
<b>TOTAL COST</b>	<b><u>\$38,535.00</u></b>

Staff recommends the bid be awarded to Turf Care in the amount of \$38,535.00. This item is also under the budgeted amount.

Commissioner Curtiss asked if the golf course had experience with this company.

Dan Smith stated the golf course has experience with this company, they represent Jacobson equipment in Missoula.

Commissioner Curtiss asked if these items have already been included in Larchmont's capital improvements budget.

Dan Smith stated they were included.

Commissioner Curtiss moved that the Board of County Commissioners accept the bid for two Tri-Plex Greens mowers for Larchmont Golf Course from Turf Care in the amount of \$38,535.00 as it appears to be the lowest and best bid. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Bid Award: Courthouse 4th Floor Remodel (Facilities Management)**

Larry Farnes, Facilities Manager, presented the staff report.

Bids for the remodel of the 4th floor of the Courthouse Annex were advertised and seven qualified bids were received as follows:

BIDDER	BASE BID	ALTERNATE	TOTAL
Sirrius Construction	\$1,018,000	\$36,200	\$1,054,200
Western Interstate	\$1,043,700	\$39,200	\$1,082,900
Garden City Builders	\$1,044,000	\$41,500	\$1,085,500
Swank Enterprises	\$1,059,000	\$36,000	\$1,095,000
Bodel Construction	\$1,088,000	\$37,400	\$1,125,400
Quality Construction	\$1,137,500	\$48,000	\$1,185,500
Pew Construction	\$1,144,000	\$28,400	\$1,172,400

It is the recommendation of Facilities Management and Architects Design Group (ADG) to award the bid to Sirrius Construction in the amount of \$1,054,200. The alternate bid is for skylights on the fourth floor. Because the windows where the old jail used to be are small, skylights were an alternative to add more natural light. That alternative is included in the bid recommendation.

Commissioner Curtiss stated that in a letter received from the Library, they did not have a good experience with this contractor.

Larry Farnes stated that he felt there were some communication problems which led to a negative experience. He has contacted several others who have had Sirrius Construction do work in the last year. One contact was Samantha Kemp from the Florence Building who said Sirrius Construction had done a really good job. She has hired them to do maintenance in the building as well. A second contact was Missoula Federal Credit Union. Sirrius Construction did their recent remodel and MFCU was very satisfied with the work done. He has not talked with Bette Ammon at the Library about her experience with Sirrius Construction. Second hand information led him to believe there were some scheduling problems with carpet installation. Some harsh words were exchanged but he has not spoken with Bette to get the details. ADG also contacted others in the engineering and architectural fields who have had good experience with Sirrius Construction. He is confident they will do a good job.

Commissioner Curtiss stated she had received an e-mail saying that the University of Montana had also had a less than favorable experience with Sirrius Construction.

Greg Robertson asked what the architect's estimate was for the project.

Larry Farnes stated that the architect's cost estimate was \$14,000 higher than Sirrius Construction's bid.

Dennis Stanicky stated that he worked for the Carpenter's Union in Western Montana. He is speaking today not in favor of or against any particular contractor, but to urge the Board to get the best value for the tax dollars spent and hire the most responsible contractor available. He has intentionally not looked at the bid results. He asked the Board to pick a contractor who provides good health insurance and supports the local hospitals. St. Patrick Hospital wrote off \$32.5 million last year in unpaid health care. Contractors that provide health insurance are keeping hospitals open. Contractors that don't provide health care insurance are not helping the community. The Board should chose a contractor who provides defined benefit retirement plans so people are not on public assistance after they have worn themselves out building public works projects. He is asking the Board to hire a contractor who supports apprenticeship training, to help solve and reverse the trend of a lack of qualified people. He does have a serious problem with Sirrius Construction receiving this bid; they killed a carpenter and permanently maimed another at the University by cutting corners on safety. For that reason, his organization cannot Sirrius Construction for any public work project.

Mike Sehestedt stated the current bidding statute is written to accept the lowest responsible bidder. The Legislature took out the "lowest and best responsible bidder" and modified it to "lowest responsible bidder." The lowest bidder is a straight mathematical calculation. His legal opinion of "responsible" in this context means a contractor who can get a bond. It is required that the successful bidder on all project pays the prevailing wage which includes an allowance for fringe benefits, if they are not provided. That doesn't address the concerns of Mr. Stanicky, but it is a factual background of the process. A few years ago, more than just the numerical bid and the ability to get a bond could be looked at to determine and evaluate the "best" bidder. That discretion has been taken away by the Legislature.

Commissioner Carey stated that Mr. Stanicky raised some very important points. If that criteria can be taken into consideration, if Western Interstate provides health and retirement benefits, then the extra money might be well spent. The spread between the high and low bidders is only about \$120,000 on this million dollar contract.

Mike Sehestedt stated that statute 23-75-2309, optional bidding preference for County residents, reads: "Every contract subject to bidding must be let to the lowest responsible bidder." That is as amended by the 2003 Legislature, which deleted the phrase "and best" after "lowest." Previously, the County had the latitude to look at more carefully the qualifications and practices of bidders. The clear intent of the Legislature and the plain language remaining in the statute is that if there is a conforming low bid and the company can get a performance and payment bond, the County is obligated to accept the bid, or reject all bids and bid again.

Chairman Evans asked if there needed to be a reason to reject all bids.

Mike Sehestedt stated there did not need to be a reason.

Greg Robertson stated that performance and the quality of a contractor used to be a measure that could be used in the decision-making process. That is no longer the case. It is valuable to know this information ahead of time so that Larry can take it into consideration and watch the contractor carefully.

Mike Sehestedt stated he was not happy with legislation that takes away discretion, but he cannot interpret the statute any other way. The bids were good across the board. Even if the Board had discretion, they would have to conduct a more

reasoned and balanced investigation rather than accept the testimony of one individual, with all due respect to that individual. However, the Board does not have the ability to do that anymore. They must either accept the lowest bid or reject all bids and bid the project again.

Commissioner Curtiss asked, for future reference, if more restrictive language could be included in the advertisement to bid. Can it be included that the successful bidder must offer certain benefits.

Fred Van Valkenburg stated that a project could be advertised in a fashion that included within the requirements that the successful bidder provide health insurance and/or retirement benefits. That would drive up the cost but everyone would understand the requirements for successful bidding on the project. They cannot say they won't accept a bid from anyone who has had an employee die on the job. That would be an unconstitutional bid requirement.

Mike Sehestedt stated that negligence would not be determined because it is covered by Workers Compensation and would not get litigated in that framework. Some objective safety standard could be included in the bid requirements, such as a Worker Compensation accident rate not exceeding a specific amount. Some objective, measurable standard could be included in future bid specifications.

Dennis Stanicky stated the increase in cost is a misconception. There are numerous references that indicate costs will not necessarily go up because good benefits are provided. Requiring responsible bidders to treat their community and workers responsibly does not necessarily drive up the cost, or if the costs do go up they tend to be within 1% or 2%, typically, nationwide, for all construction. The safety record of Sirrius Construction is documentable. OSHA has records of post accident violations which are publicly available.

Commissioner Carey asked if this could legally be put out to bid again with different criteria.

Mike Sehestedt stated that if all bids are rejected and the project is put out to bid again, part of the bidding climate is lost. These bids are favorable because they were done early. He does not have a history of how bids come in on a re-bid process. Contractors have exposed their costs and would not be willing to play again. He concurred with Mr. Stanicky that the cost would not be a big issue because of the way the prevailing wage works. If benefits are not provided, they must be paid in offset dollars.

Greg Robertson stated that he concurred with Mike about rejecting all bids and re-bidding. The contractors have shown their numbers and his experience with re-bids has not been positive. His recommendation is to proceed with awarding the bid based on the statutory requirement but take an affirmative approach expressing the concerns heard today with the contractor to ensure good quality work and product.

Chairman Evans asked if Larry would still have some control over things as the County Facilities Manager.

Larry Farnes stated he would be on-site every day watching the progress of this project. He felt Fred will also provide some oversight on the project as well.

Mike Sehestedt stated that although Larry would be overseeing the project, the responsibility for safety still rests solely with the contractor.

Greg Robertson stated that these same things were heard when bidding and awarding the Mullan Corridor Sewer contract to Nelcon. Contracting is a two-way street and communication is a very important aspect. Expectations need to be expressed properly and as long as that is handled up front, the project should run smoothly.

Larry Farnes stated that Mike Absalonson from ADG wanted to sit down and have a meeting with Sirrius Construction before the contract is signed to make clear what the County is looking for in the way of safety and quality.

Fred Van Valkenburg asked if a representative from Sirrius Construction was present; however none was present. As the principal tenant, he asked what the anticipated start date and completion date was for this project.

Larry Farnes stated the start date would come as soon as the contract was signed, bonds approved and a construction schedule is developed. He hasn't seen a schedule yet, but the estimate is completion by early fall.

Fred Van Valkenburg asked what the process was for any change orders that might be necessary.

Larry Farnes stated there were 4 or 5 pages in the specification book on how to fill out a change order, either from the County's perspective or from the contractor noting a problem that needed to be addressed.

Fred Van Valkenburg asked if the Board of County Commissioners approved change orders.

Larry Farnes stated that if the change order amounted to a large amount of money, it would indeed come to the Board for approval. A small contingency fund is built into the bid for small corrections. If the change is for a major item, the Board would have to sign off on the change order. There were some issues with the roof during the Health Department remodel involving a large enough amount that it had to get approval from the Commissioners.

Fred Van Valkenburg stated that he was concerned about change orders because this is a remodel project. There is a greater potential to run into unanticipated problems with a remodel project.

Greg Robertson stated that there could be unexpected problems that might show up.

Larry Farnes stated they have had numerous engineers and architects look at the project. There have been discussions about concerns that may arise. An example is where the stairs will be cut through; ADG hired a structural engineer to have a second look at that to make sure everything was anticipated.

Fred Van Valkenburg stated that he was concerned about noise associated with construction. The judges are particularly irritated by unexpected noise and have been known to issue an order to stop work. Has that likelihood been anticipated.

Larry Farnes stated there have been many discussions about that issue. During the demolition of the 4th floor, he worked closely with both District Court judges and the Sheriff's Department. Most of the really noisy work will be scheduled between 5:00 p.m. and 10:00 a.m. There will be a certain amount of noise with the project, that is unavoidable. There has been much discussion between ADG, Gordon-Prill and himself about the noise issue. Judge Odlin has mentioned the noise and how to schedule around it. The Sheriff's Department, because it has 24 hour a day presence, will have some noise issues, but the work has to be done. The contractor has been made aware of the fact that this is a functioning courthouse and that a judge might ask for a few hours of quiet during a jury trial.

Commissioner Curtiss moved that the Board of County Commissioners accept the bid for remodeling of the 4th floor of the Courthouse Annex from Sirrius Construction as the lowest responsible bidder and that concerns about safety and project management issues be communicated to Sirrius Construction.

Commissioner Carey seconded the motion reluctantly because there is not a viable alternative. Mr. Stanicky has raised some very significant issues and he would like to see future bid proposals to incorporate some of those concerns.

Commissioner Curtiss stated that she agreed with Commissioner Carey.

Mike Sehestedt stated that staff is working to revise the bidding and contract boilerplate. When those changes are complete, he will bring the new language to the Board for review.

Fred Van Valkenburg asked if Commissioner Curtiss's motion included both the base bid and the alternate included in the bidding results.

Commissioner Curtiss amended her motion to include both the base bid and the alternate, for a total of \$1,054,200.00. Commissioner Carey's second stood. The motion carried on a vote of 3-0.

#### **Bid Award: Approve Microwave Engineering Contract (Emergency Services)**

This matter was postponed to March 3, 2004

#### **Hearing (Certificate of Survey): Hendrickson Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as COS 829A, located in Sections 5 and 6, Township 15 North, Range 19 West.

Drew Hendrickson has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 25 acres in size located near Arlee, Montana. Mr. Hendrickson proposes to create one approximately 20 acre parcel for transfer to his wife, Lolita L. Hendrickson, for residential purposes and keep the remaining approximately five acre parcel for residential purposes as well. The property is located on the Flathead Indian Reservation and pursuant to the Interlocal Agreement, a letter was sent to the Tribes requesting comment on this transfer. No response was received within the 30 day comment period.

The history of the parcel is as follows: In June, 1976, COS 892 was filed creating a tract of land greater than 20 acres. The owners, Edward and Dorothy Blaskovich, deeded the property to Jon and Nancy Scott in July, 1976. The Scott's deeded the property to Betty and Drew Hendrickson in August, 1977. Betty Hendrickson filed a quit claim deed in March, 1983, quit claiming the property to Drew Hendrickson.

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

Chairman Evans opened the public hearing.

Drew Hendrickson was present and came forward to answer any questions the Board may have.

Commissioner Curtiss stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. She asked Mr. Hendrickson if he was going to transfer this land to his wife.

Drew Hendrickson stated that was correct, this is not an attempt to evade subdivision review. They live on the five acres and the transfer is being done for future estate planning.

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

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

#### **Hearing (Certificate of Survey): McKinney 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 M of COS 4728, located in the northeast one-quarter of Section 33, Township 15 North, Range 21 West.

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John W. and Judith L. McKinney have submitted a request to create two parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately four acres in size located near Frenchtown, Montana. John and Judith propose to create two approximately one acre parcels for transfer to their daughter, LaVon McVey, and their son, Stephen Habets, for residential purposes and keep the remaining approximately two acre parcel for residential purposes as well.

The history of the parcel is as follows: Joseph and Evelyn Boyer requested and were approved a family transfer exemption November 23, 1994. A Warranty Deed was filed in January, 1995, deeding Tract M to their daughter, Lisa Boyer-Riesenbeck. Lisa then filed a deed in February, 2000, deeding the property to John W. McKinney and Judith L. McKinney.

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

Chairman Evans opened the public hearing.

John McKinney was present and came forward to answer any questions the Board may have.

Commissioner Carey stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. He asked Mr. McKinney if he was going to transfer this land to his children.

John McKinney stated that was correct, this is not an attempt to evade subdivision review. This is being done so the children will have a place to build a home.

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

Commissioner Curtiss moved that the Board of County Commissioners approve the request by John W. and Judith L. McKinney to create two parcels by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Consideration: Meadowlands, Lot 1 (2-lot Commercial/Light Industrial Subdivision) – Thornton Drive near the Wye**

Tim Worley, Office of Planning and Grants, presented the staff report.

Mahlon and Jerill Tackitt, represented by Ron Ewart of Eli & Associates, are requesting approval of Meadowlands, Lot 1, Summary Subdivision, a two lot commercial subdivision, southeast of the Wye on Thornton Drive. The two lots are proposed to be 1.25 acres and 1.01 acres in size. Mel's Electric currently occupies the proposed 1.25 acre parcel. The original Meadowlands Subdivision dates back to 1994 when a 6 lot subdivision was approved.

The location is zoned C-C2 (General Commercial). The zoning district has no prescribed density and the Comprehensive Plan designation for the site is Light Industrial. This proposal meets both zoning and the Comprehensive Plan. Staff recommends approval of Meadowlands, Lot 1, Summary Subdivision.

There is no substantial history of agriculture at this location and no irrigation ditches exist on the property. The area is zoned for commercial and industrial uses so no agricultural uses will be interrupted by the proposal. This location is accessed by Highway 10 West, not far from the Wye. Thornton Drive provides specific access to the subdivision. Both Highway 10 and Thornton Drive meet road standards; Highway 10 meets major road standards and Thornton Drive meets commercial road standards found in the Subdivision Regulations.

There are three variance requests associated with the proposal. One is from curb and gutter along Highway 10 and two sidewalk-related variances, one for each road. Erik Dickson of County Public Works supports all the variance requests because there are no facilities of this kind in the general area. Staff also supports the three variance requests.

There is a shared driveway planned for the lots off Thornton Drive. Staff recommends there be a maintenance agreement to take care of the portion that is shared by both lots.

Highway 10 is a Primary Travel Corridor and the applicant has included a Development Agreement that requires lot owners to take care of the lot frontage in a way that is consistent with the primary travel corridor standards. A portion of the Primary Travel Corridor standards were not included in the Development Agreement and staff is recommending that those additional standards be included.

Staff also recommends a condition that the RSID language found on the plat, which specifically references Thornton Drive, also refer to Highway 10, as an RSID can be used as a funding mechanism for improvements on a State highway. Another road and pedestrian related condition is in regard to Mountain Line. Route 10 of Mountain Line's bus service travels by this location. As a result, Steve Earle would like to see the developer petition into the Missoula Urban Transportation District.

Missoula Rural Fire Station #2 is located within 1.5 miles of the proposed subdivision. Curt Belts, Assistant Fire Chief, recommended some different options for any new structures on the property. One would be that commercial grade sprinklers be installed or that some sort of on-site protection, such as a storage tank, be installed. Curt also recommended that addressing on the property meet current fire standards. Staff has recommended these as conditions of approval.

There are no essential natural environment or public health and safety related issues because this is a developed area with a mix of both occupied and vacant lots. The applicant has included a Development Agreement associated with weed



control. Staff recommends that an Avigation Easement be recorded for this property as it is within the Airport Influence Area.

Ron Ewart, Eli & Associates, Inc., developer's representative, thanked Tim for his work on the proposal. The staff report is thorough and they are in agreement with the conditions. He was concerned about a rumor that has been going around and wanted to put an end to it – Jimmy Hoffa is not buried there!!!

Chairman Evans asked if this was the only property being required to comply with Primary Travel Corridor standards in this area.

Ron Ewart stated there is another subdivision in the area that has installed trees in conformance with the Primary Travel Corridor standards. The developer does not have a problem with conforming to the standards.

Commissioner Carey asked what business might be locating to the site.

Ron Ewart stated they did not know what business might occupy the site. It will be similar to other businesses in the area.

Chairman Evans asked for public comments. There were none.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Article 3-2(7) of the Missoula County Subdivision Regulations requiring curbs and gutters on roads fronting and within all subdivision, based on the findings of fact in the staff report; approve the variance request from Article 3-2(8)(A)(ii) of the Missoula County Subdivision Regulations requiring boulevard sidewalks or paved walkways along Thornton Drive, based on the findings of fact in the staff report; and approve the variance request from Article 3-2(8)(A)(ii) of the Missoula County Subdivision Regulations requiring boulevard sidewalks or paved walkways along Highway 10/93, based on the findings of fact in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the Meadowlands, Lot 1, Subdivision, based on the findings of fact in the staff report and subject to the conditions contained in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

#### **Meadowlands, Lot 1, Summary Subdivision Conditions of Approval:**

##### **Development/Maintenance Agreement**

1. Article 3-14(C) of the Missoula County Subdivision Regulations shall be added to the Primary Travel Corridor development agreement, subject to review and approval by OPG, prior to final plat approval. *Subdivision Regulations Article 3-14 and OPG recommendation.*
2. A shared driveway maintenance agreement shall be filed with the Missoula County Clerk and Recorder's Office, subject to review and approval by County Public Works and the County Attorney's Office. *Subdivision Regulations Article 3-2(1)(1)(iii) and OPG recommendation.*

##### **Airport Influence Area**

3. An avigation easement shall be recorded for this subdivision, in compliance with the Airport Influence Area Resolution and subject to review and approval of the Missoula County Airport Authority prior to final plat approval. *Subdivision Regulations Article 3-1(2) and Airport Authority recommendation.*

##### **Fire**

4. Plans for address signs, including size and location, shall be reviewed and approved by the Missoula Rural Fire District, prior to final plat approval. *Subdivision Regulations Article 3-2(2)(G) and Missoula Rural Fire District recommendation.*
5. A Development Agreement for this subdivision shall be filed with the Missoula County Clerk and Recorder's Office, subject to review and approval by OPG and the County Attorney's Office, and shall include the following terms: Prior to occupying the commercial structures constructed on the lots within Meadowlands, Lot 1, the purchasers of the lots shall: 1) install NFPA 13 standard commercial fire sprinkling systems in new structures, to be reviewed and approved by the Missoula Rural Fire District; or 2) provide a 5,000 gallon self-filing storage tank with a fire department connection, to be reviewed and approved by County Public Works and the Missoula Rural Fire District. *Subdivision Regulations Article 3-2(10)(E), 3-7(1)(C), 3-7(1)(E) and Missoula Rural Fire District recommendation.*

##### **MUTD**

6. The developer shall petition the subdivision into the Missoula Urban Transportation District prior to final plat approval. *Subdivision Regulations Article 3-1(6) and MUTD recommendation.*

##### **RSID Waiver Statement**

7. The RSID/SID waiver statement on the plat shall be amended to include Highway 10/93. *Subdivision Regulations Article 3-2(3)(E) and OPG recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 2:50 p.m.

THURSDAY, FEBRUARY 26, 2004

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.

DEC 004 PM 0017

Claims Lists – The Commissioners signed two (2) Claims Lists, dated February 25, 2004, with the following grand totals:

- 1) \$16,168.36; and
- 2) \$5,285.21.

The Claims Lists were returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated February 26, 2004, with a grand total of \$56,354.85. 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 No. 2004-024 and Letter – The Commissioners signed Resolution No. 2004-024, dated February 26, 2004 a Resolution to Authorize Submission of Application and Commitment of Funds for the Montana Department of Commerce Home Investment Partnerships Program ("HOME") on behalf of Opportunity Resources, Inc. ("ORI"). Chairman Evans also signed a submittal letter, dated March 1, 2004 to Julie Flynn, HOME Program Manager, Helena, Montana, enclosing the grant application and supporting the assistance for the development of an accessible group home on behalf of ORI.

Letter – The Commissioners signed a letter, dated February 24, 2004 to Dave Galt, Director, Montana Department of Transportation, Helena, Montana, regarding access and safety issues on the Highway 93 corridor between Lolo and Missoula, particularly the dangerous intersection at Hayes Creek Road and Highway 93. The Commissioners stated they would like to be actively involved in the process of developing a traffic and access management plan for the corridor, and would like also to ensure public participation in said process.

Other items included:

- 1) The Commissioners denied Willis Hintz's appeal to the County Auditor's decision not to pay a Petty Cash Reimbursement Claim for \$12.10 for liquor used during a Sheriff's Department DUI training session.

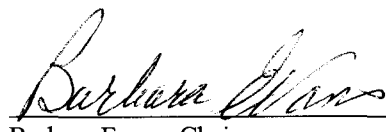
The minutes of the Administrative Meeting are on file in the Commissioners Office.

#### **FRIDAY, FEBRUARY 27, 2004**

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

Plat and Agreement – The Commissioners signed the Plat and Development Agreement for Golden West Addition No. 1, Lot 16, located in the SW¼ of Section 14, T 13 N, R 20 W, PMM, Missoula County, a total area of 3.40 acres (gross and net), with the owners of record being Avi and Joan Bardin. The Development Agreement, dated February 18, 2004 relates to the following: 1) Weed Control; 2) Wildlife; 3) Radon Protection; 4) Woodstoves; 5) Water Supply for Fire Protection; and 6) Address Signs.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

MONDAY, MARCH 1, 2004

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

Claims List – The Commissioners signed the Claims List, dated February 26, 2004, with a grand total of \$135,334.99. The Claims List was returned to the Accounting Department.

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Joe A. Hansen, Lolo, as applicant for Justice Court, Department 1, 4500 Warrant #3243, issued January 23, 2004 on the Missoula County Justice Court 1 Trust Fund in the amount of \$195.00 (exoneration of partial amount of posted bond), which was not received in the mail. No bond of indemnity is required.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending February 29, 2004.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Shirley E. Faust, for the month ending February 29, 2004.

TUESDAY, MARCH 2, 2004

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

Claims Lists – The Commissioners signed two (2) Claims Lists, dated March 1, 2004, with the following grand totals:

- 1) \$47,905.10; and
- 2) \$12,973.72.

The Claims Lists were returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated March 2, 2004, with the following grand totals:

- 1) \$18,462.20; and
- 2) \$14,656.17.

The Claims Lists were returned to the Accounting Department.

Plat and Agreements – The Commissioners signed the Plat, Subdivision Improvements Agreement, Montana Trust Indenture, and Subordination Agreement for West Pointe, Phase 1, a subdivision located in the SE¼ of Section 26, T 14 N, R 20 W, PMM, Missoula County, a total area of 24.70 acres, with the owner of record being Circle H Ranch Limited Liability Company. The Improvements Agreement, dated February 11, 2004 relates to asphalt roadway; curbs and gutters; sanitary sewer mains and services; storm drainage; water mains; sidewalks; and trails and landscaping improvements; said improvements shall be completed no later than two years from the date of the final plat approval. The estimated costs are \$937,916.00, and have been secured by a Montana Trust Indenture, dated February 11, 2004 with First American Title Company of Montana, Trustee. Also signed was a Subordination Agreement, dated March 2, 2004 between Missoula County and Sterling Savings Bank, c/o Action Mortgage, Lake Oswego, Oregon, which secures a Promissory Note in the principal sum of \$3,000,000 between Sterling as Lender and Circle H Ranch and West Pointe, LLC as Borrowers.

#### ADMINISTRATIVE MEETING

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

Resolution No. 2004-026 – The Commissioners signed Resolution No. 2004-026, dated March 2, 2004, a Budget Amendment for the Health Department, reflecting \$5,000.00 (Revenue) for the Suicide Prevention Network Grant. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Agreement – The Commissioners signed a Collective Bargaining Agreement between Missoula County and Teamsters Local #2 (Public Defenders Unit), for the promotion of harmonious relations between the Employer and the Union; for the establishment of an equitable and peaceful procedure for the resolution of differences; and the establishment of pay, hours of work, fringe benefits, employee safety and other terms and conditions of employment. The term will be July 1, 2003 through June 30, 2005. All terms and conditions are set forth therein. The document was returned to Steve Johnson in Human Resources for further signatures and handling.

Contract – Chairman Evans signed Contract (#04-07-3-11-002-0) between the Missoula City-County Health Department (Health Promotion Division) and the Montana Department of Public Health and Human Services, for funding in the amount of \$5,000 for the performance of various federal grant-related activities to reduce Montana's fire and fall injuries and deaths among high risk families and senior citizens through home visits and smoke alarm installation and public education programs. The term will be July 1, 2003 through June 30, 2004. All other terms and conditions are set forth therein. The document was returned to the Health Department for further signatures and handling.

Investment Policy – The Commissioners approved and signed a new Missoula County Investment Policy, which was updated by the Investment Committee. Missoula County's Treasurer will be contracting with two investment firms (D.A. Davidson and SmithBarney Citigroup Kalispell) to invest part of the County's portfolio.

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

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WEDNESDAY, MARCH 3, 2004

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

Claims List – The Commissioners signed the Claims List, dated March 2, 2004, with a grand total of \$3,681.62. The Claims List was returned to the Accounting Department.

Plat and Agreements – The Commissioners signed the Plat, Development Covenant, and Subdivision Improvements Agreement and Guarantee for Valley Estates, Lot 2, a subdivision located in the SW¼ of Section 14, T 13 N, R 20 W, PMM, Missoula County, a total gross and net area of 2.27 acres, with the owners of record being Randy L. and Rebecca L. Dayley. The Development Covenant, dated February 18, 2004 sets forth Conditions of Approval regarding address signs, weed control, and radon mitigation systems. The Improvements Agreement, dated February 19, 2004 relates to grading and site preparation, asphalt walkway, and landscaping (to be completed by Missoula County). The estimated costs are \$2,750.00, and have been paid for by a Cashier's Check from 1<sup>st</sup> Interstate Bank.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending February 29, 2004.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

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

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Dr. John Stowers for the provision of health care services as required in the Missoula County Detention Facility. The total amount shall not exceed \$80.00 per hour (and no more than six hours per week unless agreed to by the Facility Administrator or designee). The term will be January 1, 2004 through January 1, 2009. All other terms and conditions are set forth therein.

Resolution No. 2004-027 – The Commissioners signed Resolution No. 2004-027, dated March 3, 2004, a Resolution to establish Rowan Street as a County Road. This non-maintained public road is located in the NW¼ of Section 14, T 11 N, R 20 W, PMM, Missoula County, Montana, from the end of that portion of the Bitterroot to Bannack Road within the 60 foot wide Rowan Street right-of way; thence westerly approximately 2,116 feet to the easterly right-of-way of Queen Anne's Lane.

Resolution No. 2004-028 – The Commissioners signed Resolution No. 2004-028, dated March 3, 2004, a Resolution to abandon Old Rock Creek Road from the Bonita Ranger Station Road to Downwind Drive, located in the N½ of Section 7, T 11 N, R 16 W, PMM, Missoula County, Montana, as the right-of-way has no value to Missoula County.

#### PUBLIC MEETING – March 3, 2004

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Jean Curtiss, Commissioner Bill Carey, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall, Deputy County Attorney Marnie McClain and County Public Works Director Greg Robertson.

#### Pledge of Allegiance

#### Public Comment

None

#### Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$307,140.60. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### Hearing (Certificate of Survey): Bush Family Transfer

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as a tract of land located in the northwest one-quarter of the southwest one-quarter of Section 5, Township 13 North, Range 16 West.

Richard Dean Bush, Sr. has submitted a request to create two parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 21.71 acres in size located near Bonner, Montana. Mr. Bush proposes to create two approximately 1.5 acre parcels for transfer to his daughter, Brandi Renee Bush and his son, Richard Dean Bush, Jr., for residential purposes and keep the remaining approximately 18.71 acre parcel for residential purposes as well.

The history of the parcel is as follows: Marjorie Anne Culum obtained this parcel in October, 1958. Marjorie deeded the property to Floyd and Anna Mae Cheff in April, 1972. In January, 1977, a warranty deed was filed, deeding the property to Walter E. Bush, Sr., Michael Wayne Bush and Richard Dean Bush.

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

Chairman Evans opened the public hearing.

Brandi Renee Bush was present and came forward to answer any questions the Board may have.

Chairman Evans stated that State law allows this exemption so land can be transferred to family members. The Board is charged with making a determination that this is actually a family transfer and not an attempt to evade subdivision review. She asked Ms. Bush if she was going to receive this land from her father.

Brandi Renee Bush stated that she and her brother both want to build a house near their father and they want to keep the property in the family.

Commissioner Curtiss stated that the staff report says the property was deeded to three gentlemen, perhaps brothers. Is the property now in just her father's name.

Brandi Renee Bush stated the property is owned by her father, her uncle and her grandfather.

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

Commissioner Curtiss moved that the Board of County Commissioners approve the request by Richard Dean Bush, Sr. to create two parcels by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Bid Award: Approve Microwave Engineering Contract (Emergency Services) – Postponed from February 25, 2004**

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

The County has recognized the need to replace the existing microwave equipment. In December, a Request for Qualifications (RFQ) was issued for engineering firms to design the new system and to provide project management services during installation.

Two firms responded to the RFQ; Gillespie, Prudhon & Associates (GP&A) and Dunne Communications. GP&A had the best response. On January 15, 2004, the Board of County Commissioners authorized the Office of Emergency Services to negotiate a contract with GP&A for the Board's final approval.

The initial financial proposal from GP&A was \$231,000. That has been negotiated down to \$99,975, which is the "not to exceed" amount. Every effort will be made to keep the actual amount under that figure. It is recommendation of the Emergency Services to approve the contract with GP&A and authorize the Chairman to sign the contract.

Commissioner Curtiss stated that the negotiated amount is a great deal less than the initial proposal. What factors were involved in the negotiations.

Jane Ellis stated that a great deal of the cost involved many layers of detailed engineering drawings that she felt they could do without, plus negotiations as to how many hours would be involved.

Commissioner Carey moved that the Board of County Commissioners approve the contract with GP&A as the best and most responsive offer and authorize the Chair to sign the contract. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Hearing: Floodplain Variance (Pruyn Rip-Rap)**

Todd Kliezt, Floodplain Administrator, presented the staff report, including a Power Point presentation with pictures of the area in question.

Dr. Earl Pruyn has requested the County grant a variance from Section 5.02.B.3 of the Missoula County Floodplain Regulations to allow existing riprap along the Bitterroot River to be repaired. Dr. Pruyn would like to repair 200 linear feet of failed riprap across four locations along the Bitterroot River. Missoula County Floodplain Regulations prohibit new or repaired riprap except when structures are in imminent danger. As there are no structures in imminent danger on this parcel, the proposal does not meet the minimum standards of 5.02.B.3 and the Floodplain Permit was denied.

In March, 2000, after significant public debate, in an attempt to minimize the potential adverse effects of bank stabilization projects, the Missoula County Commissioners formally adopted amendments to the Floodplain Regulations essentially prohibiting the use of riprap unless pre-existing structures were in imminent danger of being damaged by a stream.

This primarily agricultural 180-acre parcel is located approximately 1.25 miles north of Lolo. The parcel is divided by the Bitterroot River, but is principally bound by the Bitterroot River on the east and Highway 93 on the west. The entire portion of the parcel west of the Bitterroot River is within the mapped floodplain and approximately half of that within the regulatory floodway.

The bank was previously stabilized at some point in the past. As suggested by Ladd Knotek, Montana Fish, Wildlife and Parks, the current bank erosion likely occurred due to a combination of undersized riprap, cattle watering at the river and the moderately high flows that occurred during last year's run-off.

On June 26, 2003, the applicant submitted a floodplain application to the Office of Planning and Grants to repair 30 feet of riprap. A site visit was conducted by then Floodplain Administrator Roy Fyffe on July 9, 2003. On July 14, 2003, the Missoula Conservation District required the applicant's bank stabilization project to be designed by a professional engineer. On August 13, 2003, the Conservation District forwarded to OPG a copy of an engineered design for 200 feet of riprap from Paul Druyvestein, PE of DJ&A. The Conservation District granted a 310 permit on September 11, 2003

and notified the applicant that a County Floodplain Permit, DEQ 318 permit and Army Corps of Engineers (COE) 404 permit were required.

On August 18, 2003, Roy Fyffe sent a letter to Paul Druyvestein indicating a variance from the floodplain regulations was required as there were no structures in imminent danger. Mr. Fyffe also forwarded the application and design to the local office of the Montana Department of Natural Resources and Conservation (DNRC) for comment.

On September 15, 2003, the DNRC recommended denial of the permit and/or any variance. The applicant's floodplain permit was denied by then Floodplain Administrator Jeff Schalow on October 6, 2003.

On November 5, 2003, the applicant appealed the floodplain permit denial to the County Board of Appeals (Board of County Commissioners) through Michael Sehestedt, Deputy County Attorney. The appeal indicated "all other required permits have been obtained." On November 7, 2003, the COE granted 404 authorization for 30 feet of riprap. (The Army Corps of Engineers provided verbal authorization to Todd Kliez, current Floodplain Administrator, allowing the repair of 200 feet on February 5, 2004). The DEQ granted a 318 permit on February 6, 2004.

On January 24, 2004, the applicant applied to DNRC for a floodplain variance. On February 10, 2004, the applicant amended his floodplain permit application to reflect 200 feet of riprap and submitted the County floodplain permit application fee. Although stating that "the variance application information submitted does not support the case to meet the requirements outlined" in the County regulations, the DNRC approved the variance request on February 11, 2004.

Staff does not believe the applicant has met all of the minimum criteria for granting a variance as stated in Section 4.04 of the Missoula County Floodplain Regulations. Staff recommends that the Board deny the variance proposal. The floodplain regulations that were initially adopted by the County in 2000 clearly specify that new or repaired riprap can only be used to protect existing structures in imminent danger. There are no structures on this parcel in imminent danger. The applicant has not addressed the potential effects of this project on adjacent properties.

Paul Druyvestein, DJ&A, stated that he was representing Dr. Pruyn. DJ&A was hired to provide engineered drawings for the situation happening on this property. It should be noted that what has caused the problems to date is not the river, it is actually animals going to and from the river to drink. The areas where there was existing riprap have been degraded through that process over the years. They want to replace what was existing prior to the animals eroding the bank. Any other way to fix these areas will cause instability if not replaced with what is next to it, approximately a Class II riprap. The situation as is has three weak spots along the bank that will in time get worse and have the potential of washing out the existing protection. The river will eventually undermine the back of the exposed riprap. This is probably an appropriate place to grant a variance to return the stream bank back to what it was when the riprap was initially placed there.

Chairman Evans asked about the difference between the initial request for 30 feet and this request for 200 feet.

Paul Druyvestein stated his firm was brought in to look at 200 feet. The 30 feet was to replace riprap in just one of the unstable areas. Their plan addresses three areas that are weak and don't have any riprap but are separated by existing riprap. They included all of those areas so it would be one continuous stabilized bank.

Chairman Evans stated that if this is approved, how will Dr. Pruyn prevent it from happening again.

Paul Druyvestein stated that the plan shows the owner will place a fence and funnel the cattle to one area for access to the river, not into the areas that will be repaired.

Marnie McClain asked how long Dr. Pruyn has been working animals on this property. Was her understanding correct that there was previously riprap on this site that has broken down. Approximately how many feet of riprap and when it was installed.

Paul Druyvestein stated that his understanding was that the area had been previously riprapped, but he did not know when it was installed. The existing riprap is at both ends of the project, and he could measure the actual distance. It is in the area where the cattle have come down to the river and degraded those areas. They are replacing the bank and pushing it back to where it was and arborizing it with Class II riprap. They will also use willows and other vegetation to soften the effect as much as possible.

Marnie McClain stated she has seen what was approved by the Conservation District and it does show that vegetation. The project is to replace a section in the middle that was already riprapped.

Paul Druyvestein stated that was correct.

Marnie McClain asked what development exists across the river, both upstream and downstream. She asked if the tree shown in the pictures was cabled in.

Dr. Earl Pruyn stated the tree was partially the cause of this problem; as the water washed underneath the roots, it tipped over and allowed the river to wash in. The area was all riprapped originally. The cows made three tracks to the river which caused the damage. It will all be fenced except next to the tree, a hardened area will be created where the cows can go down to the water. That will be the only point where they will be allowed to reach the water.

Marnie McClain asked how long Dr. Pruyn had owned the property and how long he had been running cattle there.

Dr. Pruyn stated he had owned the property for 15 to 20 years, quite a while. It is his calving pasture. The cows are moved there when they are ready to calf which is about February 15th. The animals are moved out just before the floods come.

Chairman Evans opened the public hearing.

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Bruce Farling, Director of Montana Trout Unlimited, stated that when the floodplain regulations were amended a few years ago, his organization was very supportive of them. They recognized that language was needed to allow for variances in unusual situation where public safety, health or dwellings were threatened. They do not believe that a variance in this particular situation is appropriate. This is a very common situation in Montana, a bank is breaking down that has been compounded by livestock use. A variance is not needed because it doesn't meet the regular criteria under the floodplain regulations for when riprap should be installed and, as both staff and DNRC have pointed out, it doesn't meet all of the requirements for a variance. Most importantly is the section that states: "A determination that refusal of a permit would, because of exceptional circumstances, cause a unique or undue hardship on the applicant or community involved." In this case, that is not the situation. The Bitterroot River moves laterally, especially in this particular area. 20% of the bank between the Lolo levee to the Clark Fork River has been stabilized. Every time a variance for a little more riprap is allowed, it cumulatively moves the flood crest further downstream, which affects private property downstream. It also reduces habitat for fish and wildlife in a public river. They do not feel the issues are compelling enough in this situation to speak positively toward granting a variance for this particular project.

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

Commissioner Curtiss stated that it would be helpful for the Commissioners to do a site visit and look at what is really on the ground to see if a variance, or some portion of it, would be appropriate.

Chairman Evans stated that the regulations specifically address structures, but the land also has a value. It is her personal belief that when land washes into the river, it muddies the water and doesn't help the fish. This land has been used for agriculture and has had riprap its full length in the past. It would appear that Dr. Pruyn is intending to fix it so this will not happen again. A site visit is fine, but she sees no reason to not let him protect his property, as long as the County does not have any liability for what happens across the river or down the river.

Commissioner Carey stated he also felt it would be helpful to conduct a site visit.

Dr. Pruyn stated that his cattle are there right now and he would like to begin the fence project as soon as possible.

Chairman Evans stated that the Board would make a site visit on Friday, March 12, 2004 at 2:00 p.m. A decision will be made the following Wednesday, March 17, 2004 at the regularly scheduled Public Meeting.

**Hearing: Grove Street Special District Rezoning (from C-RR3 to Grove Street Special District) and 35-Unit Subdivision for Lease or Rent – west of Reserve Street, north of South Third Street West**

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

This is a request from homeWORD, Inc., represented by Don MacArthur of MacArthur, Means & Wells, to rezone the property legally described as a portion of Lots 43 and 44 of Cobban and Dinsmore's Orchard Homes Addition and a portion of the Milwaukee Railroad right-of-way for the purpose of constructing 35 dwelling units. The applicant is proposing to change the zoning of the property from C-RR3 (Residential) to the Grove Street Special District.

This is also a subdivision for lease or rent to create a Low Income Housing Tax Credit project consisting of nine units located in two 1½ story rowhouse units, twenty units located in the main building and six units in the farmhouse type building fronting on Grove Street.

County and City agencies were notified, adjacent property owners were notified of the subdivision for lease or rent by certified mail and adjacent property owners within 300 feet were notified by first class mail.

At their regularly scheduled meeting on February 17, 2004, the Missoula Consolidated Planning Board voted unanimously to recommend approval of the rezoning request subject to staff's recommended condition. The Planning Board also voted unanimously to recommend approval of the subdivision for lease or rent proposal subject to staff's recommended conditions with the addition of one condition recommended by staff in response to agency comment from the County Weed Board received after issuance of the staff report, but prior to the Planning Board hearing. The Planning Board unanimously recommended one amendment to recommended subdivision for lease or rent Condition 4 requiring asphalt paving rather than a gravel path as recommended by staff.

At the Planning Status meeting on March 1, 2004, Deputy County Attorney Colleen Dowdall distributed recommended revisions to the proposed zoning district standards. Those changes were forwarded to the applicant and they have provided a response in a memo to the Commissioners distributed by staff today. The proposed development provides 35 units of affordable rental housing for households making between 30% and 50% of the area median income. Rents are proposed to range from \$265 to \$719 per month and homeWORD is using a combination of Federal, State and private funding to ensure the Grove Street housing will remain affordable over a 35-year time period.

The 2002 Missoula County Growth Policy as amended by the 1998 Missoula Urban Comprehensive Plan Update and the Reserve Street Area Plan (1995 Update) are the applicable plans for this property. The recommended land use designation is Low Density Residential, with a maximum residential density of up to four dwelling units per acre. The 2002 Missoula County Growth Policy states that "increases in household income have not kept pace with increases in housing costs during the past 10 years, which makes housing affordability an issue that needs continued attention in the County." (Page 2-2). The property is located in the Primary Urban Growth Area as provided by the Urban Comprehensive Plan.

The Urban Growth Area is "the area in which high density residential, commercial and industrial development is encouraged to locate. This area is generally considered to be appropriate for all urban-density residential development when there are no environmental constraints and where the public services necessary to support high density uses (most notably public transportation and public sewer) are present." (Page 68, MUACP).



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The property is currently zoned C-RR3 (Residential). The maximum density allowed in the C-RR3 zoning district is four dwelling units per acre. The proposed subdivision for lease or rent has a density of 7.77 dwelling units per acre. Specific goals of the Reserve Street Area Plan are to preserve the rural character which exists in parts of the planning area; to create park, trail and other open space opportunities; and to maintain or enhance the area's diverse character and livability (e.g., its single and multi-family housing, large and small lots, good schools, churches and light commercial). (Page 7-8).

The Grove Street Special District preserves the small-scale agricultural development pattern that was the foundation of the Orchard Homes neighborhood. Clustering the housing units allows much of the parcel to be used for agricultural purposes. Water rights run with the property and access to an irrigation ditch, off-site along the northern boundary and on-site along the eastern boundary, will be used for agricultural purposes. The mature cottonwood trees in the northwest corner of the site will be preserved.

The building architecture reflects the farming tradition of the neighborhood with buildings clustered around a courtyard and a "farmhouse" building fronting Grove Street. A deep front yard setback is similar to other houses along Grove Street. The two rowhouse structures with 9 dwelling units on the north of the property are one-and-a-half stories in height, keeping in character with the structures on the adjacent property which has a two-story residence and accessory structures. The 20 dwelling unit main building is designed as a large barn and will face onto a courtyard to the west and onto a playground and community garden area to the south. A community building is proposed to be created from a salvaged barn.

Compliance with the Comprehensive Plan relies largely on the preservation of open space on the property due to the underground parking. The applicant has provided an alternative site plan if underground parking is not feasible that is still in substantial compliance with the Comprehensive Plan.

Grove Street is classified as a local street within the Urban Growth Area requiring a minimum road surface width of 36 feet with curb and gutter within a minimum 60 foot right-of-way. Grove Street is an off-site road, which is currently paved to a width of 24 feet, with no curb and gutter, within a 60 foot right-of-way. The applicant is not proposing to pave to the required road surface width or provide curbs and gutters. The applicant is requesting a variance from the requirement for boulevard sidewalks on Grove Street to allow a meandering 5 foot wide concrete sidewalk with a landscaped boulevard that varies between 3 feet and 10 feet in width. A variance is being requested from the standard of Subdivision Regulations Section 3-2 and 3-4. County Public Works stated that it would be unreasonable to require this developer improve this portion of Grove Street. Mike Kress, Transportation Planner, had no adverse comments regarding this proposal. The Planning Board recommended approval of the variance request.

Access to all dwelling units within the subdivision is from a 20 foot wide private access drive with a boulevard sidewalk design on one side of the drive. The applicant is providing 55 parking spaces for 35 dwelling units. This proposal complies with current City and County parking requirements (County Zoning Resolution Section 3.02 and City Zoning Ordinance Chapter 19.78).

The proposed zoning will create more traffic than currently is generated by the undeveloped site with C-RR3 zoning; however, location of this density close to existing services and neighborhood commercial uses, as well as providing convenient pedestrian and bus service access, will likely lessen congestion in the streets of the community.

The subdivision will result in approximately 53 additional school age children being added to the Missoula County Public School District. Children from this subdivision will attend Hawthorne Elementary School, C.S. Porter Middle School and Big Sky High School. No adverse comments from the school district were received.

The Missoula Rural Fire District and the Missoula Fire Department serve the property because it is located in the Mutual Aid Zone for fire and medical emergencies. The property is located in the Missoula County Sheriff's Department jurisdiction; however, the Missoula City Police Department will also respond if needed.

Bob Rajala, City Fire Marshal, commented that hydrants and adequate fire flow must be provided prior to combustible construction; that access roads must provide 20 foot unobstructed width; the automatic fire sprinklers throughout all structures are suggested; and that all structures must have addresses visible from the street.

Curt Belts, Missoula Rural Fire District Assistant Fire Chief, commented that water supply for fire protection purposes is acceptable with fire hydrants and fire sprinklers; access is acceptable if installed as proposed; and that all buildings must be addressed with address signs clearly visible from the street in all light conditions.

Planning Board is recommending a condition of approval that plans for hydrants, adequate fire flow and addresses visible from Grove Street be reviewed and approved prior to final plan approval and be installed prior to combustible construction.

There is an active lateral irrigation ditch that runs off-site north of the northern boundary of the subdivision. This ditch goes into an underground pipe at the northeast corner of the property then runs along the eastern boundary of the property in a 10 foot wide irrigation easement. Todd Klietz, Floodplain Administrator, commented that this parcel is located outside both the regulatory FEMA designated floodplain and the potential floodplain associated with the River Road area of concern.

Montana Fish, Wildlife and Parks commented that some form of guidelines be put in place to help tenants deal with the probable attraction of wildlife to a large garden and/or orchard area. The applicant has received a copy of the Living with Wildlife brochure published by Montana Fish, Wildlife and Parks.

The Milwaukee Trail bicycle/pedestrian path provides easy non-motorized access to the surrounding neighborhoods and services east and west of the property. It is recommended that a zoning standard requiring bicycle facilities be provided at a ratio of one space per dwelling unit. David Claman, City Parks and Recreation Department, stated that he would like to have the trail easement dedicated to the City at the time of final plan approval. Planning Board recommended a condition

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that the owner dedicate to the City of Missoula a 20 foot wide pedestrian public access easement, and construct an asphalt trail within the easement, along the south boundary of the proposed subdivision.

No new lots will be created by this subdivision for lease or rent, therefore, no parkland dedication is required. A park/agricultural area comprising approximately 50% of the property is being proposed with the development. A pathway will provide access through this park/agricultural area. A portion of this park/agricultural area adjacent to the Milwaukee Trail Bicycle/Pedestrian path will be dedicated to the City at the time of annexation. Until that time, that portion of the park/agricultural area will be owned and maintained by the applicant.

Don MacArthur, MacArthur, Means & Wells Architects, stated he was representing homeWORD on this proposal. They have been involved in the design of the project from the beginning. This is affordable housing, that is the key factor to keep in mind. They have been looking for land for some time to find good places to create beautiful, affordable housing. This parcel of land was not inexpensive, but purchasable. Land cost is a factor used to determine an affordable housing unit. This is affordable housing for those at 30% to 50% of the median income, roughly a \$7.00 an hour job. In order to make the housing affordable, the land cost is figured in and there has to be some increased density on the property. That is the reason for the Special District Rezoning, to achieve more units on the land to make this affordable. It is a trade off they are asking the Board to support. They are offering back an extensive neighborhood process, communicating with the neighbors, handing out flyers, getting people to come to the neighborhood charrette. They held a two day charrette and invited folks from the community to work on the design process. Key items from the charrette were the importance of the semi-rural character of the area, deep setbacks, mature trees, open space, viewsheds through the site, the history of agricultural use at the site, etc. There were concerns about buffering the development from uses on the north and south of the parcel. There was general support for clustering the building to allow larger open space. There is an opportunity to extend the connectivity of the trail system into the City without having a surface crossing on Reserve Street. Other concerns had to do with traffic in the area; Grove Street has become a cut-through to avoid the Third and Reserve Street intersection. They feel they have addressed most of the charrette findings in the design of the project. About 2 acres of the site have been preserved as open space for agricultural use. They are partnering with Garden City Harvest to run the community gardens and orchards. The design integrates the project into the neighborhood in terms of the character of the buildings, the setbacks, the sense of farming, buffering, etc. It is expected that 250± trees will be planted, Garden City Harvest will assist with the orchard design. To assist in creating a semi-rural character is the parking design for the site. Parking has been clustered into small clumps, 2-3 cars, in various locations and one large parking area underneath the main building, providing 20 spaces, some of which will be handicapped accessible for the units in the building. There is a barn in Stevensville that will be dismantled then reassembled on-site to be used as a community center. The goals on the project is to design beautiful affordable housing that supports and enhances the lives of low income citizens. They also try to achieve sustainability both in the use of energy efficient construction and supporting multi-modal transportation options through bicycle parking and trail systems. They believe in contributing to the neighborhood by reacting to existing patterns, preserving trees, matching setbacks, preserving the heritage. The design establishes an inward community as well as participation in the community as a whole. The buildings focus inward and have a community gathering space. They urge the Board's support of the project and he is available to answer any questions.

Chairman Evans opened the public hearing.

Ren Essene, Executive Director of homeWORD, stated that this project serves homeWORD's mission to provide affordable housing to the community. This project will be affordable for those working families in the community making less than \$17,500 per year, about an \$8.00 per hour job. The Department of Commerce has said that Missoula's rents are the highest in the State for two bedroom units. Missoula leads the State with the second highest number of people in poverty. Missoula has the highest number of people receiving food stamps and the highest rate of households paying over 50% of their income for housing. From 1998, rents have increased 34% while wages increased only 2%. Missoula is second to Boulder, CO in the western region for the discrepancy between housing and wages. These are some tough times in Missoula. This project is sensitive to the neighborhood and one of their core goals is to reach out and work with the neighborhood. That process began almost a year with door knocking last March. There are about 80 homes in the neighborhood and they reached about two-thirds of the neighbors. They also left information about the project and invitations for the design charrette. They also mailed out invitations to all the neighbors in the area. They mailed out pre-charrette information which explained their goals. They were upfront from the beginning that they were looking for a project that would be serving 35 households, the density needed to make the project affordable. In May, 2003, a Community Design Charrette was held with over 30 people in attendance. There was not as much neighborhood participation as they wanted so they went back to the neighbors again with charrette information, then held a follow up meeting in July which was attended by 20 neighbors. There was positive feedback about the project at that meeting. People felt the design responded to the issues raised at the charrette. A lot of the concerns raised were about Grove Street and the cut through problems, pot holes, maintenance issues and speeding. A meeting was set up with the County Road Department and they have begun a traffic study to address some of those issues. After working internally on the project, a second follow up meeting was held February 10, 2004, a week before the Planning Board meeting. For each of the meetings, signs were posted in the neighborhood and public notice was published. There were some new faces at the follow up meeting in February, most notably Mr. and Mrs. Sommers, the neighbor to the north. Don MacArthur met with the Sommers to look at ways to address some of their concerns regarding buffering and setbacks. The Planning Board felt the project was designed to respect the neighborhood and recommended approval of both the rezoning and the subdivision for lease or rent. homeWORD is a Missoula based non-profit organization that has been around since 1994. They have developed 7 projects in the community, all of very high quality. They are invested in the community and maintain their properties well. They have not had any neighborhood issues with their previous projects and are a responsible neighbor and partner.

Karilynn Cochran-Roberts stated she was a homeowner in the Grove Street area. She is speaking in opposition to the rezoning. She and her husband have circulated a petition of area homeowners and renters who are opposed to the rezoning. She lives in a subdivision about 50 to 60 feet from the area in question. They recognize that growth is inevitable on Grove Street. She is not opposed to subdivisions or low income projects and homeWORD has done many fine projects in Missoula. That is not the issue. The issue is traffic in the area. Grove is a small street and has some major access problems because of Reserve Street. Technically, there are two entrances and exits from Grove, but in reality there is only one most of the time because of traffic on Reserve Street. The residents have major concerns about more traffic on this road. They would like to know what long range plans have been proposed for the area and its current and future

traffic needs. They would like to know what impact new subdivisions have on the area. These are all questions that pertain to this particular issue as well as the open space that will be subdivided in the future. It was decided that a traffic study was not necessary because of the size of the proposed development. She would like that to be reconsidered. Grove Street has traffic from area residents and is getting more and more traffic from Reserve Street. As has been mentioned, Grove Street is used as a short cut and that use is increasing. Traffic backs up on Reserve Street in either direction, all the way to River Road. It is very difficult to get onto Reserve Street from Grove Street. The residents who have signed this petition oppose the rezoning of the Grove Street area. They would like to suggest that a traffic study be done to assess the needs of the area, current and future. They would also like to request a long range plan addressing development in the area. She would like to see these issues addressed now rather than waiting until new subdivisions have been developed and traffic is a complete mess.

Al Sommers stated that he has two acres to the north of this proposal. He has no problem with the people involved, they are doing their jobs and he is trying to protect his property. The row houses are going to be huge buildings next to his property. No one can tell him if this will help or hurt his property value. He feels the buildings are too big for the area. The old cottonwood trees shed big branches when the wind blows and could cause problems for the buildings. They will need to be trimmed back to almost nothing or removed. The streets are too narrow and there is not enough parking. At the new project on Wyoming Street, cars are three deep to the garages. This proposal could have well over 70 vehicles. Renters tend to move a lot, they never stay home, they are always coming and going. The idea of building a neighborhood then coming back to fix the road hasn't work anywhere in Missoula and will not work here. Access to Reserve from River Road is almost impossible. Traffic backs up from Mullan Road all the way to 7th Street. Grove Street is evolving into single family housing. This facility is too big for the neighborhood and will be out of place. There is also an issue with water rights and the irrigation ditch. He does not feel the neighborhood is ready for this development.

Bill Comstock stated he is a resident of River Road just east of Reserve Street and a member of that neighborhood's Neighborhood Council zoning and development review committee. He has been a member of the River Road, Emma Dickenson infrastructure planning and coordinating group to help create a plan for his neighborhood. He is also the president of the River Road community development corporation, a private non-profit group dedicated to implementing and developing infrastructure plans through private/public partnerships. He is not speaking as a representative of any of those groups, but mentions them to show he has been involved in development issues in the River Road area for quite some time. He is also not affiliated with homeWORD in any way, but is strongly advocating for approval of this project. Grove Street looks very similar to a section of River Road about 10 years ago, a mix of suburban style homes, older historic homes on large lots and historical agricultural uses. He has appeared before the City Council and the Planning Board to discuss negative impacts of development in the River Road area many times. He is excited to see a project that has gone to so much effort to be sensitive to the character of the neighborhood. He never saw a project like this on River Road. Developers came in, bought the property, used the zoning ordinances and crammed housing on small lots with no open space and no sense of the quality of life of the existing residents or the character of the neighborhood. Developers never came to him and his neighbors to ask what they could do for the neighborhood. That is not the process in this case. This project from the start has reached out to the community and the neighborhood in a meaningful and significant way. The proposal accurately reflects the results of that process which he was thrilled to participate in. It was a challenge to the developers and the County to do fairly high density infill development in an historic section of town and still maintain its character as dictated by the land use plan. He advocated strongly for the open space and the preservation of the historic agricultural use and the clustered building design. The process that homeWORD used engaged the neighborhood and community to accommodate many of the goals of urban infill development while at the same time maintaining full compliance with the Reserve Street area plan. Some of the main points mentioned were to preserve the rural character of the area, maintain diversity of housing and building types, setbacks, lot sizes, etc. The proposal harkens back to the historic character of Orchard Homes going back to 1905 when it was originally plotted as five acre tracts. That tradition continues today in much of the area and this project speaks to all those concerns. A new idea of infrastructure developed by his planning group is called green infrastructure, to say that it means more than streets, sewer, gutters and sidewalks. It includes mature trees, hedgerows, irrigation ditches, lands and active agricultural production that create livability. This proposal is the first to truly implement that concept and he applauds the proposal for that. homeWORD has an exceptional record of achievement in developing high quality, affordable housing. This project steps to the next level. Each one of their previous projects has been award winning and has added value to the neighborhood. Many residents of River Road would welcome a project like this in their neighborhood. He publicly asked homeWORD to come to his neighborhood and do a project like this. It would have been great to have something like this proposed in his neighborhood 10 years ago. The project could be a model for redevelopment in the Orchard Homes area, sensitive to the historical character and land use that at the same time accommodates fairly high density. He requested that the developers continue their efforts to facilitate working with the neighborhood, in conjunction with the County, to mitigate the traffic impacts on Reserve Street. The concerns that have been expressed about traffic would not depend on this particular project. Existing ordinances in place, including the density bonus, would allow 28 to 30 single family residences on this parcel. Traffic impact mitigation would apply to any development on this property. This project does not add any additional impact than another development would. He urged the developers to continue working with the County to try to find ways to mitigate the traffic concerns on Grove Street. He also supported the recommendation that bicycle facilities be added. In summary, this project brings forward three important process: engagement of the neighborhood and the community in the design process in a significant and meaningful way; the preservation of open space and sustainable agriculture combined with highly clustered, fairly dense, truly affordable housing; and maintaining the historic, rural character of the neighborhood. He hoped this could be a model for future development in the Orchard Homes area. He strongly urged the Board to support this new way of doing things by supporting this project.

Commissioner Carey asked what the current density of Mr. Comstock's neighborhood was along River Road.

Bill Comstock stated there were two main zones in the area. RLD-4 allows three dwellings per acre and using the density bonus, could be up to six dwellings per acre. The other approximate half of the neighborhood is designated for multi-family dwellings up to 16 per acre.

Gene Simon stated he lived on Krysty Drive located at the corner of River Road and Grove Street. In the brochures distributed there was an explanation of what was to be done with the traffic on Grove Street. He is not against development, it is coming, but he is against overloading some of the small streets. Grove Street is already overloaded. If sidewalks and a better street are wanted, it will be done with an SID. As has been mentioned, exit to Reserve Street

turning left cannot be done and turning right depends on what time of the day it is attempted. The only access for the better part of the day is Grove Street. When the brewery was located at Third and Grove, they were allowed to build a tasting room that blocked the view to the right. There is private property on the left with a lot of trees and bushes that blocks vision to the left. To turn onto Third Street off Grove Street, the front end of a vehicle is almost out into traffic to see if anyone is coming. The bike trail to the east ends on the other side of Reserve Street because private property won't grant access. The people that do have access to irrigation are not getting water because the irrigation has been shut off for some time. How much will this increase traffic on Grove Street. There could be 50 to 80 cars associated with the development and there is not enough parking for that many cars. Overflow would park on Grove Street, making it even more narrow than it is now. He recommended that the Board take under consideration the traffic issue before approving the project.

Bonnie Hamilton stated that she lives in the Leonard's Clark Fork Estates. She is concerned about the Third Street and River Road intersection. Big lilac bushes have not been trimmed and reduce visibility. There is also a big rut in the road on Third Street turning onto Grove Street. This project is very interesting to her and she is not speaking against it, but something needs to be done about the Third Street and Grove Street intersection.

Mary Ann Sommers stated that she lives on the north end of this project. There are no barns in the area. She was unsure where the developer got the impression that there were. Having buildings 40 to 50 feet tall would be too much for the neighborhood. Ground water needs to be addressed as she did not feel there would be any way underground parking could be accomplished. Her house is built up because of the ground water, it was not possible to put in a basement. She has concerns about the irrigation ditch and safety of school aged children walking down streets that are too narrow and have too much traffic. The river is not far from this site which could also contribute to the ground water problems. She felt low income folks deserved better than putting them right next to Reserve Street. She is in favor of single family housing and leaving the zoning unchanged.

Mike Dey stated he lived just south of this proposal. He is not thrilled with 35 units on this parcel, he is in favor of single family dwellings. This doesn't make a lot of sense. Non-profit organizations don't pay any taxes and everybody else has to pick up the tab. That piece of property has about \$2,000 worth of taxes that won't be paid.

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

Don MacArthur stated there were a couple of points raised that he would like to address. Dale mentioned that there were two site plans submitted, one with parking underneath the main building and one with head in parking stalls around the perimeter. That would be the back up plan if ground water issues turn out to be a problem. The preliminary information from hydrologists show ground water at 12 to 15 feet, which should be acceptable for underground parking. There are five test holes on the site right now to monitor ground water over the course of the spring. If ground water does present a problem, they have a backup plan that still maintains the integrity of the design. There was a lot of testimony about traffic issues on Grove Street. They are in full support of waiving their right to protest a future RSID for any improvements along Grove Street, both adjacent to the property and at the intersection, that would benefit the development. Mr. Sommers brought up some issues with regard to the scale of the buildings. The row houses on the north side have been designed so they slope down to a single story along the north property line to minimize the visual impact. They are no higher than 10 feet along the property line and are lower than the buildings on Mr. Sommers' property. The central building has a height limit of 40 feet. The other buildings are at or below the allowable underlying height limit in the C-RR3 zoning district. The proposed zoning district shows a 15 to 20 foot setback and the underlying zoning would allow a 7.5 foot setback and a 30 foot height limit. The rowhouses are designed to set back farther and be lower than what is allowed under the current zoning. They also intend to create fencing and landscape buffering along the northern property line to further address the Sommers concerns. They met with Greg Robertson to discuss possibilities for Grove Street. There were comments about the speed and having it assessed to change the speed limit. That has been partially completed, prior to some equipment malfunctions. There have been comments about traffic calming on Grove Street. There have been comments about the intersection at River Road and Reserve Street, using limited access to keep cut through at a minimum. All these issues have been discussed with Greg but there has been no clear indication as to what could or should be done.

Commissioner Carey stated that the trail right-of-way ends east of Reserve Street. Has any connectivity been looked into.

Don MacArthur stated that the Bentley Park development is immediately across Reserve Street which has a park with a trail through it. Dave Claman from the City Parks Department is actively pursuing all of the connections to allow the trail to go all the way through the River Road/Emma Dickenson area to Russell Street and connect to the trail system to McCormick Park. There are pieces in the River Road/Emma Dickenson area where the trail is not fully connected, but there are generally ways to use the street system to interconnect.

Commissioner Carey asked about the tax issue and what, if any, taxes this development would pay.

Ren Essene stated this project would be an affordable, low income housing tax credit project. The State legislature, in 1999, passed a law that makes non-profit general partners tax exempt for this type of property.

Commissioner Carey stated the chief objections he heard mostly relate to the traffic implications and parking. The current zoning would allow 4 dwellings per acre and this will be slightly less than 8 per acre, approximately doubling the density. Don MacArthur did, however, bring up the issue of the design element. This is one of the most creative proposals he has seen and he would hate to lose this project. He would like to find a way to address the traffic issues.

Greg Robertson stated he met with Mr. MacArthur months ago about what could be done about the Grove Street, Third Street and River Road area. The transportation plan update, currently under review, is a 20 year projection on transportation improvement projects in the Missoula urban area. Other than some minor trail projects, there is nothing proposed in the Target Range vicinity west of Reserve Street. This issue is not going to go away, especially with the City's planned sewer project in the area. Development pressures are going to increase as infill starts to happen and there is not an easy answer to the problems, especially given the level of Federal funding. All of the Federal funding for the next 20 years will be used by one project, the Russell/Third project. That does not leave much funding for anything else.

Pavement preservation and minor spot improvements are all that can be done. A traffic study was undertaken in the area to study the speeds and habits of the motorists. The first attempt resulted in some incomprehensible data. The study was redone and new data is being compiled now. There are a range of options, potentially closing River Road or making it a right-out only, to curtail some of the through movements, but that raises safety issues. This is a common occurrence in growing areas where the infrastructure is behind the needs of growth. There is a 60 foot wide right-of-way corridor for Grove Street through the area and the road is paved to 24 feet, so widening would be an option. Drainage is poor and there are no bicycle/pedestrian facilities. Given the present funding situation, the only way improvements would happen would be through creation of a Special Improvement District.

Mike Dey asked what a bicycle path costs per mile.

Greg Robertson stated it varies depending on certain factors, but in general, it is approximately \$100,000 per mile.

Mike Dey stated that Libby has 11 miles of road they can't even drive on and \$100,000 per mile will be spent on a bike path that nobody pays taxes on. That is ridiculous. Also, Third Street is in the City limits and needs to be widened and that won't happen if the City has their way and it will always be a death trap.

Chairman Evans reminded the audience that the public hearing had been closed.

Commissioner Curtiss asked if there was any possibility of a four-way stop at Grove and Third.

Greg Robertson stated it would be a three-way stop and is in close proximity to the Third and Reserve intersection. He has heard several people mention the lack of site distance which is a fairly common occurrence in the Target Range area. Third Street is in City and would require mutual cooperation to do any sort of site distance improvement.

Commissioner Curtiss stated there are two issues before the Board; one to change the zoning and one to approve the subdivision for lease or rent. There are 12 criteria to consider for zoning; this request meets all of those criteria, with the exception of the lessening congestion in the streets. There were some changes suggested to the zoning district standards that were mostly for clarification purposes.

Commissioner Curtiss moved that the Board of County Commissioners adopt a Resolution of Intent to Rezone the property legally described as a portion of Lots 43 and 44 of Cobban and Dinsmore's Orchard Homes Addition and a portion of the Milwaukee Railway right-of-way from C-RR3 (Residential) to the Grove Street Special District (Residential), with zoning standards as described in the memo dated March 3, 2004, from Dale McCormick and to include renumbering as appropriate. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Colleen Dowdall stated that a 30 day protest period begins at the time of first publication of the Resolution of Intent to Rezone. The Board's action today does not actually rezone the property, but expresses their intent to do so. In the County, if 40% of the people within the C-RR3 contiguous zoning district protest, then the zoning would be defeated and the property could not be rezoned for a period of one year.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Subdivision Regulations Section 3-2 and 3-4 requiring total improvements for Grove Street, based on the findings of fact in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the Grove Street Subdivision for Lease or Rent, based on the findings of fact in the staff report and subject to the recommended conditions of approval. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey commended the project developers for making such an extraordinary effort to deal with and accommodate the neighbors interests. He hoped that something could come of this wonderful proposal.

**Grove Street Special Zoning District Condition of Approval:**

1. The Grove Street Special Zoning District standards shall be amended as indicated in the memo dated March 3, 2004 from Dale McCormick, to include renumbering as appropriate.

**Grove Street Subdivision for Lease or Rent Conditions of Approval:**

1. Grove Street Special Zoning District shall be adopted prior to final plan approval. *Subdivision Regulations Article 3-1(1)(B).*
2. The lot owner shall file a document of record waiving the right to protest a future RSID/SID for improvements to Grove Street, based on benefit. The RSID/SID waiver shall state:  
  
"Owners of the parcel waive the right to protest a future RSID/SID for improvements to Grove Street, including, but not limited to, installation of paving, drainage facilities, curbs and gutters, and pedestrian walkways or bikeways, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land depicted herein." *Subdivision Regulations Article 3-2(3)(E) and OPG recommendation.*
3. The lot owner shall file a document of record dedicating to the City of Missoula a 20 foot wide pedestrian public access easement along the south boundary of the subdivision subject to review and approval by OPG and the City Parks and Recreation Department, prior to final plan approval. *Subdivision Regulations Article 3-6 and OPG recommendation.*
4. The lot owner shall construct an asphalt trail within the 20 foot easement along the south boundary of the subdivision, subject to review and approval by OPG and the City Parks and Recreation Department, prior to final plan approval. *Subdivision Regulations Article 3-2(8)(A) and OPG recommendation.*

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5. Fire hydrants shall be installed prior to any combustible construction. Plans for hydrants, adequate fire flow and address signs visible from Grove Street shall be reviewed and approved by the Missoula Rural Fire District prior to final plan approval. *Subdivision Regulations Article 3-2(1)(E), Missoula Rural Fire District, City Fire Department and OPG recommendation.*
6. A Weed Management Development Covenant for this subdivision shall be filed with the Missoula County Clerk and Recorder's Office, subject to review and approval by OPG and the County Attorney's Office, prior to final plan approval and shall include the following items:
  - a. The landowner shall maintain the property in compliance with Montana's County Weed Control Act and the Missoula County Noxious Weed Management Plan.
  - b. The landowner shall revegetate any ground disturbance caused by construction or maintenance with beneficial species appropriate for the site at the earliest appropriate opportunity after construction or maintenance is completed. *Subdivision Regulations Article 3-1(1)(B) and County Weed District recommendation.*

**Consideration: West End Industrial Development (5 lots on 11.25 acres) – 1.4 miles west of the Airport on Highway 10**

Tim Worley, Office of Planning and Grants, presented the staff report.

Johnson Brothers Contracting, represented by Territorial Engineering and Surveying, is requesting approval of West End Industrial Subdivision, a 5 lot commercial/industrial subdivision, approximately 1.4 miles west of the Airport on Highway 10. Proposed lot sizes range from 1.61 acres to 3.42 acres. The property is adjacent to Missoula Rural Fire Station #2.

The property is zoned C-I1 (Light Industrial) and the 1996 Butler Creek Plan also designates the location as Light Industrial. The proposal complies with both zoning and the Comprehensive Plan.

Access to the property is provided by Highway 10. Lots 1, 2 and 4 have access by way of Commercial Lane. Wimmett Lane, an off-site road, provides access to Lot 3. Lot 5 will have access from Highway 10. Staff recommends that an easement be provided from either Commercial Lane or Wimmett Lane in the event that Lot 5 cannot obtain an approach permit to Highway 10. There is a variance request for non-motorized facilities for both Highway 10 and Commercial Lane. Staff recommends approval of the variance request based on the distance from existing facilities and the lack of residential neighborhoods to connect to. However, the County Attorney's Office has recommended that the non-motorized facilities variances are not necessary and has provided revised Findings of Fact and Conclusions of Law in a memo dated March 2, 2004.

Highway 10 is a Primary Travel Corridor and staff recommends filing a Development Covenant that requires adherence to Primary Travel Corridor standards. Because this is along Mountain Line's Route 10, staff also recommends that the lots owners petition into the Missoula Urban Transportation District.

The property is adjacent to Missoula Rural Fire Station #2. Curt Belts, Missoula Rural Fire District, recommends sprinklers or on-site fire protection on this property. He also recommends that addressing meet certain visual standards acceptable to the District. Staff recommends a condition that driveways in excess of 150 feet in length meet Missoula Rural Fire District standards.

The proposal is within a fully developed area, but is less than 1/10 of a mile from LaValle Creek. Fish, Wildlife and Parks stated that Living with Wildlife information be recommended as part of the Development Covenant. Staff also recommends, per the Missoula Weed District, that there be a Development Covenant to address weed control issues on the property. Because this is within the Airport Influence Area, staff recommends that an aviation easement be recorded for the property and that notification be provided on the plat that this property is within the Airport Influence Area. There is also a condition pertaining to the Missoula Wastewater Treatment Plant Service Area. Staff recommends appropriate RSID/SID waiver language be affixed to the plat in the event that sewer is available to this location.

Staff recommends approval of the West End Industrial Subdivision, subject to 12 conditions.

Chairman Evans asked for public comments.

Brenda Rankin, Territorial Engineering and Surveying, developer's representative, thanked Tim for his hard work on this project. They have addressed all the issues that came up during review, including relocating Commercial Lane to utilize the 40 foot public easement that already existed on the west boundary. The owners use one lot for their shop buildings. They don't have any definite plans for the other 4 lots at this time. They will be for sale, but they have no prospects at this time. She questioned the condition regarding addressing. The subdivision regulations state that there shall be an addressing system that conforms. In the agency review letter from Curt Belts, it says that address signs are required. However, she wondered what in particular is being required because the future owners or building locations are not known.

Chairman Evans stated that could be worked out with Curt Belts at a later date, when a future owner is known.

Brenda Rankin stated the other issue was the installation of sprinklers or on-site fire protection. This property is adjacent to the Fire Station and she asked if they had water available there.

Curt Belts stated that the Fire Station does not have water, other than the water in a watertender, which is about 1,800 gallons. Watertenders are filled from the nearest available fire hydrants such as those in the Missoula Development Park or any other subdivision that has water. State law allows a fire district to take anybody's water, but other subdivisions end up subsidizing new subdivisions without on-site water.



Commissioner Curtiss asked what kind of addressing signs were required.

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Curt Belts stated he would like to see great big ones. Address signs would not be required until there is something (a building) that needs protecting.

Brenda Rankin stated the condition says address signs need to be reviewed and approved prior to final plat approval.

Commissioner Curtiss stated that the condition reads "plans for address signs."

Brenda Rankin stated there was also a concern about the Living with Wildlife language. There are some things in the recommended language that don't pertain to a commercial subdivision. They feel that either the entire condition be deleted or amended to address a commercial subdivision.

Tim Worley stated that in the memo provided by Colleen Dowdall, all the language has been deleted. In a conversation with Brenda a few days ago, language was recommended to address some of her concerns. In the opening paragraph, delete "confining their pets" and "pet food, livestock feed" phrases. It was also suggested to delete Paragraphs C, E and F. However, the Deputy County Attorney recommended deleting the entire section.

Commissioner Curtiss stated that there could be a guard dog for one of the lots.

Commissioner Carey asked if Brenda had some language in mind or did she want the entire condition deleted.

Brenda Rankin stated that this proposal is close to a wildlife situation and they had no problem with the modifications Tim mentioned. Someone could have a guard dog but she would rather it not be called a pet. Some language could be included to speak to a guard dog situation. Basically, this is the canned language provided by Fish, Wildlife and Parks for residential subdivisions. It needs some modification for a commercial subdivision.

Denise Alexander stated that some of the findings would need to be revised to indicate that some of the Living with Wildlife provisions were being included. Staff would revise those findings prior to the approval letter being sent out.

There were no further public comments.

Commissioner Carey moved that the Board of County Commissioners amend as discussed Condition 12 pertaining to wildlife as listed on the March 2, 2004 memo and amend the findings of fact accordingly. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the West End Industrial Development Subdivision, based on the amended findings of fact and subject to the conditions as amended. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### **West End Industrial Development Conditions of Approval:**

##### **Easements**

1. The developer shall demonstrate that an approach permit for Lot 5 to Highway 10 is approved by the Montana Department of Transportation prior to final plat approval. If Lot 5 is denied an approach permit to Highway 10, the developer shall place an easement on the plat providing access from either Wimmett Lane or Commercial Lane, to be reviewed and approved by County Public Works and OPG, prior to final plat approval. *Subdivision Regulations Article 3-2(13) and Montana Department of Transportation recommendation.*

##### **Airport Influence Area**

2. 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." *Subdivision Regulations Article 3-1(2), 4-1(12) and Airport Authority recommendation.*

3. An aviation easement shall be recorded for this subdivision, in compliance with the Airport Influence Area Resolution and subject to review and approval of the Missoula County Airport Authority, prior to final plat approval. *Subdivision Regulations Article 3-1(2), 4-1(12) and Airport Authority recommendation.*

##### **Sewer RSID/SID**

4. 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 systems, based on benefit. The lot owner shall connect to public sewer within 180 days of when the public sewer main is available to the subdivision. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land." *Subdivision Regulations Article 3-1(1)(D), City-County Health Code and OPG recommendation.*

##### **Fire**

5. Plans for address signs, including size and location, shall be reviewed and approved by the Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-2(2)(G) and Missoula Rural Fire District recommendation.*
6. A development covenant 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 state that driveways in excess of 150 feet in length shall have approved turnarounds for fire apparatus with 150 feet of the building and shall have an unobstructed width not less than 20 feet and an unobstructed vertical clearance of 13 feet, 6 inches and that



final designs shall be approved by the Missoula Rural Fire District. *Subdivision Regulations Article 3-2(10)(E) and OPG recommendation.*

7. A development covenant shall be filed with the Missoula County Clerk and Recorder's Office, subject to review and approval by OPG and the County Attorney's Office and shall include the following terms: Prior to occupying the commercial structures constructed on the lots within the West End Industrial Development, the purchasers of the lots shall: 1) install NFPA 13 standard commercial fire sprinkling systems in new structures, to be reviewed and approved by the Missoula Rural Fire District; or 2) provide a fire hydrant capable of producing 350 gallons per minute (GPM) with a 2,000 gallon storage tank if on a well; or 3) provide a 10,000 gallon cistern with self-filling capabilities and a fire department connection to be reviewed and approved by County Public Works and the Missoula Rural Fire District. *Subdivision Regulations Article 3-2(10)(E), 3-7(1)(C), 3-7(1)(E) and Missoula Rural Fire District recommendation.*

#### **Missoula Urban Transportation District**

8. The developer shall petition the subdivision into the Missoula Urban Transportation District prior to final plat approval. *Subdivision Regulations Article 3-1(6) and OPG recommendation.*

#### **Primary Travel Corridor**

9. A Primary Travel Corridor development covenant shall be filed with the Missoula County Clerk and Recorder's Office that includes the provisions of Article 3-14(3)(A-C), subject to review and approval of OPG and the County Attorney's Office, prior to final plat approval. *Subdivision Regulations Article 3-14(3)(A-C) and OPG recommendation.*

#### **Public Health and Safety**

10. A development covenant shall be filed with the Missoula County Clerk and Recorder's Office advising property owners of the Health Department recommendation that all new construction incorporate passive radon mitigation systems. The language of the provision shall be subject to review and approval by OPG prior to final plat approval. *City-County Health Department recommendation.*

#### **Natural Resources**

11. The subdivider shall file a development covenant requiring lot owners to maintain the property in compliance with the Montana County Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan. The development agreement shall also require revegetation with beneficial species any areas of ground disturbance created by construction or maintenance. It shall also include a Revegetation Plan for disturbed sites that has been reviewed and approved by the Missoula County Weed Board. The development agreement shall be reviewed and approved for filing by the Missoula County Weed District and County Attorney's Office prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*
12. A development covenant shall be filed with the Missoula County Clerk and Recorder's Office, subject to review and approval by OPG and the County Attorney's Office, prior to final plat approval and shall include the following language:

#### **Living with Wildlife**

Owners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage and properly storing garbage and other potential attractants. Lot owners must be aware of potential problems associated with the occasional presence of wildlife such as deer, bears, mountain lions, wolves, skunks and raccoons. Contact the Montana Fish, Wildlife and Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help owners "live with wildlife."

The following covenants are designed to help minimize problems that owners could have with wildlife, as well as helping owners protect themselves, their property and the wildlife that Montanans value.

- A. There is the potential for **vegetation damage by wildlife**, particularly from deer feeding on green lawns, flowers, ornamental shrubs and trees in this subdivision. Owners should be aware of this potential damage. Consider using non-palatable vegetation in order to avoid problems. Owners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- B. **Do not feed wildlife** or offer supplements (such as salt blocks), attractants or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against State law (MCA 87-3-130) to provide supplemental feed attractants if it results in a "concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, owners should be aware that deer might occasionally attract mountain lions to the area.
- C. **Garbage** should be stored in secure bear-resistant containers or indoors to avoid attracting animals such as bears, raccoons, dogs, etc. *Subdivision Regulations Article 3-1(2), 3-1(10) and FWP recommendation.*

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

Agreement – Following the Public Meeting, Chairman Evans signed an Agreement for Engineering Services between Missoula County and Gillespie, Prudhon & Associates, Inc. for the system design, implementation services, and inspection/acceptance of the Critical Infrastructure (Wireless) Communications Systems and Facilities. The total amount shall not exceed \$99,975.00. The term will be January 25, 2004 through December 31, 2004. All other terms and conditions are set forth therein. The document was returned to Jane Ellis, Director of Emergency Services, for further signatures and handling.

THURSDAY, MARCH 4, 2004

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

Claims List – The Commissioners signed the Claims List, dated March 3, 2004, with a grand total of \$4,578.84. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

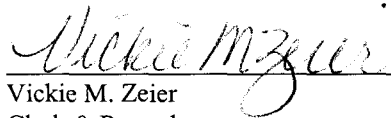
At the administrative meeting held in the forenoon, no items were signed:

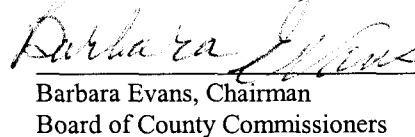
The minutes of the Administrative Meeting are on file in the Commissioners Office.

FRIDAY, MARCH 5, 2004

The Board of County Commissioners met in regular session; all three members were present in the forenoon. In the afternoon, Commissioner Curtiss served as a Judge at the County Spelling Bee which was held at the Hellgate Middle School Cafeteria. Commissioner Evans was out of the office all afternoon.

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

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

MONDAY, MARCH 8, 2004

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

Claims List – The Commissioners signed the Claims List, dated March 2, 2004, with a grand total of \$3,658.25. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 3, 2004, with a grand total of \$26,439.03. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed three (3) Claims Lists, dated March 4, 2004, with the following grand totals:

- 1) \$3,980.00;
- 2) \$15,568.21; and
- 3) \$16,624.80.

The Claims Lists were returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated March 5, 2004, with the following grand totals:

- 1) \$54,350.90; and
- 2) \$8,685.13.

The Claims Lists were returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 8, 2004, with a grand total of \$33,122.77. The Claims List was returned to the Accounting Department.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 05 – CY2004 - Pay Date: March 5, 2004. Total Missoula County Payroll: \$900,979.89. The Transmittal Sheet was returned to the Auditor's Office.

TUESDAY, MARCH 9, 2004

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

Claims List – The Commissioners signed the Claims List, dated March 8, 2004, with a grand total of \$12,468.38. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated March 9, 2004, with the following grand totals:

- 1) \$202,854.36; and
- 2) \$5,906.05.

The Claims Lists were returned to the Accounting Department.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Michael McMeekin, for the month ending February 29, 2004.

#### ADMINISTRATIVE MEETING

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

Letters – The Commissioners signed seven (7) letters, dated March 9, 2004, canceling elections (in accordance with M.C.A. 85-7-1702(3)) and declaring elected by acclamation candidates who filed a nominating petition for the following positions:

- 1) William J. Lucier, Jr. elected as commissioner to the Frenchtown Irrigation District;
- 2) Eugene Diemer and Kenneth William Richardson elected as commissioners to the Missoula Irrigation District;
- 3) Cheryl Hanson and Dan Corti elected as trustees to the Missoula Rural Fire District;
- 4) Cynthia K. Lewis and Frank Maradeo elected as trustees to the Seeley Lake Rural Fire District;
- 5) Mike Rose elected as trustee to the Frenchtown Rural Fire District;
- 6) Robert G. Starr elected as trustee to the East Missoula Rural Fire District; and
- 7) James L. Stobie and Pamela Hamilton elected as trustees to the Swan Valley Fire Service Area.

All terms are for three years. The letters were returned to the Elections Office for further handling.

Resolution No. 2004-029 – The Commissioners signed Resolution No. 2004-029, dated March 9, 2004, a Budget Amendment for the Health Department, reflecting a donation from the Tavern Owner's Association in the amount of \$500. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Resolution No. 2004-030 – The Commissioners signed Resolution No. 2004-030, dated March 9, 2004, a Budget Amendment for the Health Department, reflecting MOA received in the amount of \$12,709 for the Community Incentive Project. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Resolution No. 2004-031 – The Commissioners signed Resolution No. 2004-031, dated March 9, 2004, a Budget Amendment for the Health Department, reflecting a Folic Acid contract received from the March of Dimes in the amount of \$2,700. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Resolution No. 2004-032 – The Commissioners signed Resolution No. 2004-032, dated March 9, 2004, a Budget Amendment for the Health Department, reflecting a Healthy Tomorrows Partnership for Children Grant Award in the amount of \$16,500. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Resolution No. 2004-033 – The Commissioners signed Resolution No. 2004-033, dated March 9, 2004, a Budget Amendment for the Health Department, reflecting a grant received from the American Legacy Foundation in the amount of \$12,500. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Agreements – The Commissioners signed two (2) Sanitary Sewer Grant Program Agreements for Assistance to Owner-Occupied Households Secured by Real Property, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. The Agreements provide funds for sewer improvements and connection to the City of Missoula municipal sewer system, as follows:

- 1) Agreement for partial assistance, dated February 27, 2004, with Laura R. Johnston and Mike D. Richardson, 730 Dakota Avenue; and
- 2) Agreement for full assistance, dated February 26, 2004, with Terry & Leontina Sunderland, 110 Gold Nugget Road.

All sewer development fees and on-site connection costs and fees are as set forth therein.

Lease Agreement – Per recommendation of the Missoula County Park Board (with the requirement that Fastpitch submit to the Parks staff for approval a maintenance plan for the site), the Commissioners signed a Lease Agreement, dated March 9, 2004 between Missoula County and the Missoula Fastpitch Softball Association for a one-year lease extension for property at the Tower Street Park Complex in Big Sky Park, for the rental sum of \$1.00. All other terms and conditions are set forth therein. The document was returned to Lisa Moisey, County Parks Coordinator, for further signatures and handling.

Resolution No. 2004-034 – The Commissioners signed Resolution No. 2004-034, dated March 9, 2004, a Resolution appointing Plan Administrator Hal K. Luttschwager as the designated Privacy Official for the Missoula County Employee Benefits Plan ("MCEBP") that includes Medical, Dental, Prescription Drug and Vision Benefits that are subject to the Health Insurance Portability and Accountability Act ("HIPAA") Privacy Rule. The Privacy Official provides oversight of compliance with the MCEBP policies and procedures related to the protection of Protected Health Information ("PHI") and federal and state regulations related to participant privacy.

Plan – The Commissioners approved and Chairman Evans signed a Missoula County 3-Year DUI Plan submitted by the Health Department to the Montana Department of Transportation Traffic & Safety Bureau. This Plan represents the recommendations of the Missoula County DUI Task Force Members and community stakeholders in support of strategies to deter impaired driving. The term will be July 1, 2003 through June 30, 2006. The document was returned to Lonie Hutchison (Coordinator, Missoula County DUI Task Force) at the Health Department, for further handling.

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

WEDNESDAY, MARCH 10, 2004

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

Claims Lists – The Commissioners signed two (2) Claims Lists, dated March 9, 2004, with the following grand totals:

- 1) \$5,417.99; and
- 2) \$18,183.45.

The Claims Lists were returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 10, 2004, with a grand total of \$6,804.09. The Claims List was returned to the Accounting Department.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

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

Resolution No. 2004-035 – The Commissioners signed Resolution No. 2004-035, dated March 10, 2004, a Resolution of Intent to rezone property described as that portion of Chicago, Milwaukee, St. Paul and Pacific Railroad Company's 100 foot wide right-of-way ("ROW") across Lots 43 and 44, Cobban and Dinsmore's Orchard Homes Addition, and all of Lots 43 and 44 of Cobban and Dinsmore's Orchard Homes Addition lying northerly of the ROW, excepting therefrom the public right-of-way consisting of Reserve Street in Missoula County, Montana, located in the NE¼ of Section 19, T 13 N, R 19 W, PMM, from C-RR3 (Residential – 4 dwelling units per acre) to Grove Street Special Zoning District (Residential).

Other items included:

- 1) The Commissioners discussed and authorized the Chairman to sign the Lease Agreement with Option to Purchase for Friends to Youth, Inc.

#### PUBLIC MEETING – March 10, 2004

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Jean Curtiss, Commissioner Bill Carey, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall, County Public Works Director Greg Robertson and County Engineer Joe Jedrykowski.

#### Pledge of Allegiance

#### Public Comment

None

#### Routine Administrative Actions

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$415,519.78. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

#### Hearing: Petition to Abandon a Portion of Unnamed Book 1 Road – Frenchtown Area

#### Hearing: Petition to Abandon a Portion of the Frenchtown to Jocko Valley Trail – Frenchtown Area

Greg Robertson presented the staff reports. As both petitions pertain to the same property, the presentations were combined. Both petitions are being presented to accommodate the Hawthorne Springs Subdivision, currently under construction.

This is a **petition to abandon "Unnamed Book 1 Road** located in the southwest one-quarter of Section 31, Township 15 North, Range 20 West where it enters the north boundary of the southwest one-quarter of Section 31 and where it leaves the south boundary of the southwest one-quarter of Section 31, Road Book 1 – Road taken from USFS Maps."

The reasons for the request are as follows:

1. Property is being subdivided.
2. Road does not physically exist anymore.
3. Book 1 Road does not begin or end near a County road or State highway.

The following landowners have been notified: H Lazy Heart LLC, 10905 Butler Creek Road, Missoula, MT 59808.

This is a **petition to abandon "Frenchtown to Jocko Valley Trail**, located in the southwest one-quarter of Section 6, Township 14 North, Range 20 West and Tract 1 of COS 358 (southeast one-quarter of Section 1, Township 14 North, Range 21 West) where it enters Tract 1 of COS 358 on the west boundary and where it leaves Section 6 on the south boundary of Section 6, a GLO Trail, 1870 GLO notes describe the trail as 'Trail from Frenchtown to the Jocko Valley.'"

The reasons for the request are as follows:

1. Property is being subdivided.
2. Road does not physically exist anymore.
3. Travel is now serviced by Interstate 90, the Frontage Road and Highway 93.

The following landowners have been notified: H Lazy Heart LLC, 10905 Butler Creek Road, Missoula, MT 59808.

Chairman Evans opened the public hearings for both petitions.

Ron Ewart, Eli & Associates, developer's representative, stated that these roads do not exist on the ground and, even if they did, they would not connect to any other roads. It makes sense to abandon these two roads.

There being no further comments, the public hearings were closed.

Chairman Evans stated that a site inspection is required, after which a report will be given to the Board. The site inspection will be scheduled and the Board will make their decision at the Public Meeting next Wednesday, March 17, 2004.

**Hearing: Approve Submittal of TSEP Application for Bridge Construction on LaValle Creek and Finley Creek**

Joe Jedrykowski presented the staff report.

This is a request to approve the submittal of a TSEP (Treasure State Endowment Program) Uniform Application to the Montana Department of Commerce for a grant (50% matching) for the construction of a bridge on Deschamps Road over LaValle Creek and a bridge on Doney Road over Finley Creek.

Both bridges are in very substandard condition and are beyond the point of repair. They need to be replaced. The total cost of replacement for both bridges will be nearly \$500,000. The County would be responsible for 50% of the costs over a two year period. One bridge will be replaced in FY 2006 and one bridge will be replaced in FY 2007. A Preliminary Engineering Report was prepared last year with a grant from TSEP. The Preliminary Engineering Report was the precursor to the Uniform Application.

It is the recommendation of the Public Works Department to approve the submittal of the Uniform Application to TSEP and approve future programming of funds for the construction of these bridges. Approximately \$124,000 will be programmed for the construction of the bridge at LaValle Creek in FY 2006 and \$124,000 will be programmed for the construction of the bridge at Finley Creek in FY 2007.

In 2002, Morrison and Maierle, Inc., prepared a Preliminary Engineering Report which was funded through TSEP. They made a presentation to the Board of County Commissioners in March, 2002. At that time they identified three bridges in the County as being the highest priority for reconstruction or replacement. One of those was the Van Buren Pedestrian Bridge. The other two were the LaValle Creek bridge on Deschamps Road and Finley Creek bridge on Doney Road. The Van Buren Bridge, because of its pedestrian nature, was eligible for CTEP (Community Transportation Enhancement Program) money. Funding for the project has been secured and they are moving ahead with design and contract preparation. It is planned to rebuild the Van Buren Footbridge this summer.

The other two bridges are very old and have had extensive repairs over the years. It is to the point now where they cannot be repaired further and need to be replaced. They do not qualify for CTEP funds, but they do qualify for 50/50 matching grant money from TSEP. The application deadline for TSEP projects this year is May 7, 2004. Part of the application requirements is that a public hearing is held and citizen input is solicited. Letters were mailed to residents who live in both areas asking for their feedback. Only a few comments have been received. The most important was received from Mr. and Mrs. Gordon Doney on Doney Lane. An initial idea for the Finley Creek bridge was to rebuild an old road for access to those residents while the bridge was being rebuilt, however that old road is in very poor condition, far worse than expected. It could be subject to closure in the event of a forest fire and if the bridge is out, there would be no egress for area residents. As a result of the Doney's input, there is a requirement in the draft application for the contractor to build a temporary bridge. Mr. Doney has agreed to an area on his property for the location of a temporary bridge.

The legislature does not meet to approve TSEP projects until January of 2005. Notification of an approved project is not expected until July, 2005. Some preliminary engineering work can be done on one of the bridges during the summer of 2005 which will be reimbursed through TSEP. No construction can be done until the project has been approved. There is an outside chance the project would not be approved, but that is not anticipated.

Chairman Evans asked if the bridges would last until they could be replaced.

Joe Jedrykowski stated that he believed they would. One of them is currently subject to reduced loading.

Chairman Evans opened the public hearing.

Delene Doney stated that she and her husband were upset when they first heard about this project and the prospect of using the alternate route. Three families live on the south side of the bridge that would have been cut off in the event of an emergency. By 2006, four of the residents will be senior citizens and two have had heart surgery. It would take emergency service vehicles using the alternate route 15 minutes longer to reach residents. The road is also a major route into tribal land for fire control. If the bridge were out and the south side of the road had a fire, they would have no way out, except to ford the creek. They expressed their concerns to Mr. Jedrykowski and are willing to allow a temporary bridge to be built on their land.

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

Commissioner Curtiss asked if the cost of installing a temporary bridge was included.

Joe Jedrykowski stated that it was included.

Commissioner Curtiss stated that the County can apply for up to \$500,000, but are only asking for \$250,000.

Joe Jedrykowski stated that was correct. The total cost of both bridges will be about \$500,000, but TSEP and the County will each contribute \$250,000.

Greg Robertson stated the original report included the Van Buren Street bridge, which would have used the balance of the \$500,000. However, it did not qualify for TSEP money. They have searched the entire bridge inventory in the County and have no other projects that could use this money.

Chairman Evans asked if any steps have been taken to notify the public that the Van Buren Street bridge is going to be under construction all summer.

Greg Robertson stated that notification has been coordinated with the University of Montana, the City of Missoula and the Bicycle/Pedestrian Coordinator. As the start date get closer, there will be a public notice of the closure. The Chamber of Commerce is also involved in the notification process. The bridge will be closed after graduation. It will remain closed all summer but it will definitely be reopened before the University's football season begins.

Commissioner Carey moved the Board of County Commissioners approve the submittal of a TSEP Uniform Application to the Montana Department Commerce for a 50% matching grant, and approve future programming of funds, for the construction of a bridge on Deschamps Road over LaValle Creek and a bridge on Doney Road over Finley Creek, finding it to be in the public interest based on the staff report and public testimony. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Joe Jedrykowski stated that it would be about a month before the application documents would be ready for signature.

**Consideration of Condition of Approval: Holloman Creek Estates Fire Protection Plan**

Liz Mullins, Office of Planning and Grants, presented the staff report.

Johnson Brothers Contracting, represented by Territorial Engineering, request that a Fire Protection Plan to satisfy Condition 5 of the Holloman Creek Estates Subdivision be approved.

Holloman Creek Estates, a 3 lot minor subdivision on 120 acres, was approved by the Board of County Commissioners on July 9, 2003. The property is located 13 miles south of the junction of Upper Miller Creek Road and Highway 93 South. The property is not located within a Fire District. Property outside any fire service jurisdiction is the responsibility of the County; however, Missoula County does not have the ability to provide fire protection to this site. The subdivision is in a densely forested area. Risk of wildfire exists as a threat to this development, as well as a consequence of introducing residential uses into the Wildland/Residential Interface.

The Board of County Commissioners adopted Condition 5, which states: "The developer, in consultation with a fire protection specialist, shall develop a fire protection plan adequate for protection of the subdivision from structure fires as well as from wildfire. The plan should incorporate residential sprinklers and a source of water for protection from wildfires and other fires that originate outside the residence. It shall also discuss the necessity of homeowner responsibility for fire suppression and include a provision relieving the County of liability in the event of fire. The plan shall be reviewed and approved by the governing body, prior to filing the final plat."

The developer hired Fire Logistics, Inc. A Fire Protection Plan for Holloman Creek Estates was prepared by Bob Deeds, Senior Consultant. Mr. Deeds is present and will give a brief presentation on the Fire Plan and answer any questions the Board may have.

Staff recommends the following revisions to the plan:

1. The following statement shall be placed in the Fire Protection Plan, in the covenants and on the face of the plat:

"This property is located outside the jurisdiction of any fire protection agency. Approval of this subdivision is expressly conditioned upon property owners taking responsibility for their own fire protection. Acceptance of a deed for a lot in this subdivision constitutes acceptance of this responsibility and agreement to release Missoula County from responsibility for fire protection and hold Missoula County harmless for any damage that may result from lack of availability of fire protection services."

2. The water supply section on Page 14 of the Fire Protection Plan shall include the following statement:

"Because this subdivision is located outside the jurisdiction of any organized Missoula County fire protection agencies, to protect against a wildfire or fire which originates outdoors, the minimum water supply storage per residence shall be at least 2,000 gallons as described in NFPA Standard 1142, Section 7.2.1."

Brenda Rankin, Territorial Engineering, developer's representative, stated that during Planning Status discussions, it was noted that the statement required in Revision 1 was not needed in the Fire Protection Plan, as it is listed as an exhibit in the covenants. The statement is in the covenants and will be listed on the face of the plat.

Colleen Dowdall stated that was her recollection. The Fire Plan is a part of the covenants so the language does not need to appear in both places.

Brenda Rankin stated the covenants have been redone and this statement is listed in bold so it stands out from the rest of the text.

Bob Deeds, Fire Logistics, presented a handout to the Commissioners listing the goals of the Fire Protection Plan. Goals include:

- Provide life and property protection
- Reduce the possibilities of a fire escaping into the forest fuels
- Provide access for fire protection agencies that might respond in the event of a wildland fire
- Mitigate potential Missoula County liability

A fire risk assessment was conducted which included an on-site analysis of the topography of the land, weather, fire history, fuels, a fire risk rating and fire behavior expectations. The fire risk rating used two formats, one from the National Fire Protection Association and one from the Department of Natural Resources and Conservation. They looked at modifying fuels before construction and after construction. They made recommendations on building components. Outbuildings, in addition to residences, were included in the review. Built-in fire protection (residential fire sprinklers) will be used, plus anything radiating 250 square feet from the structure will also be protected by a fire sprinkler system. The potential for a fire breaking out of a structure into the forest is about 99.99% eliminated. Backup power generators will be provided to operate equipment in the event of a power failure. The water supply will be from wells. The sprinkler systems will be supplied with well water, as will the 2,000 gallon storage capacity, to be used for any kind of outside fire. Fire suppression will be provided during construction. Homeowner education and responsibility was incorporated into the plan following the Fire Wise guidelines. The plan follows the recommendations from the National Fire Protection Association and DNRC. The plan was reviewed by Curt Belts and Bill Lindstrom of the Missoula Rural Fire District and Scott Waldron, the Missoula County Fire Warden.

Commissioner Carey asked if the fire risk rating was done independent of Fire Wise protection.

Bob Deeds stated that was correct. Recommendations were followed to look at a variety of things, including water supply, roadways, fuels, percentage of slope, etc. Two formats were followed, one from DNRC and one from NFPA. A check list is prepared which gives a score for the location; a risk rating of low, moderate or high. This location falls in the moderate risk rating category. This information has been incorporated in the Fire Protection Plan and is available to potential buyers.

Commissioner Curtiss asked if the fire risk rating determined how much it would cost for fire insurance.

Bob Deeds stated that was a different kind of rating, an Insurance Service Office rating. The fire risk rating is for the actual subdivision.

Chairman Evans asked for public comments. There were none.

Bob Deeds stated that when this is approved, a few revisions will need to be made. Should the date be November of 2003, or should he use today's date.

Colleen Dowdall stated he should use today's date as the approval date of the plan.

Commissioner Carey moved that the Board of County Commissioners approve the Fire Protection Plan dated November 2003 and presented March 10, 2004, to satisfy Condition 5 of the Holloman Creek Estates Subdivision, subject to the revisions as listed in the staff report, with an amendment to Revision 1 removing "in the Fire Protection Plan" from the first sentence. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

There being no further business to come before the Board, the Commissioners were in recess at 2:00 p.m.

#### Site Inspections

Following the Public Meeting, Commissioner Curtiss accompanied Public Works Director Greg Robertson on site inspections for two roads in the Frenchtown area.

### THURSDAY, MARCH 11, 2004

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, Commissioner Evans spoke to the Leadership Missoula group.

Claims List – The Commissioners signed the Claims List, dated March 9, 2004, with a grand total of \$32,754.84. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed three (3) Claims Lists, dated March 11, 2004, with the following grand totals:

- 1) \$14,992.75;
- 2) \$7,031.93; and
- 3) \$875.00.

The Claims Lists were returned to the Accounting Department.

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Scott Anthony Newell, Seeley Lake, as applicant for Accounting Warrant #272733, issued July 26, 2002 on the Missoula County Payroll Fund in the amount of \$715.71 (for clothing allowance), which was not received in the mail. No bond of indemnity is required.

#### ADMINISTRATIVE MEETING

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



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Resolution No. 2004-036 – The Commissioners signed Resolution No. 2004-036, dated March 11, 2004, a Budget Amendment for the Health Department, reflecting an unexpected additional \$28,848 received as part of the Tobacco Contract. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Agreement – The Commissioners signed one (1) Sanitary Sewer Grant Program Agreement for Partial Assistance to Owner-Occupied Households Secured by Real Property, dated March 10, 2004, with Tru Mary Kamps, 841 Dakota Avenue, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. All sewer development fees and on-site connection costs and fees are as set forth therein.

Plan Amendment – The Commissioners reviewed and approved "Exhibit 8.05, Missoula County Employee Benefits Plan Amendment, Use and Disclosure of Health Information." This Amendment describes how medical information may be used and disclosed and how to get access to this information, as defined in the Privacy Rule of the Administrative Simplification provision of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). This amendment became effective as of April 14, 2004.

Easements – The Commissioners signed a Grant Creek Waterway and Flood Protection Easement, dated February 3, 2004 between Missoula County and Shelter West, Inc. for an easement to accommodate improvements for the Grant Creek Flood Control Project. The property is known as Tract 2 of COS No. 3987, located in the SE¼ of Section 11, T 13 N, R 20 W, PMM. The document was returned to Public Works Director Greg Robertson for further signatures and handling.

Request for Action – Per recommendation of Jane Ellis, Director of Emergency Services, the Commissioners approved the purchase of one weather monitoring station at Pt 118 to better predict heavy storms (flash flooding and mud slides) in the severely burned areas from last summer's fires, contingent on the National Weather Service's ("NWS") agreement to purchase an additional station to be located in the Petty Creek area. The stations cost approximately \$5,000 each; the DES budget can absorb the cost of one, but not both. Maintenance responsibility was also discussed. The Commissioners also approved a draft letter written by Peter Felsch of the NWS/Missoula, which will be sent to homeowners in areas that may be at risk.

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

**FRIDAY, MARCH 12, 2004**

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

Site Inspection

In the afternoon, the Commissioners and staff from the County Attorneys Office and the Office of Planning and Grants conducted a site visit for a floodplain variance request from Earl Pruyn on his property north of Lolo.

Claims Lists – The Commissioners signed three (3) Claims Lists, dated March 11, 2004, with the following grand totals:

- 1) \$8,662.96;
- 2) \$1,213.00; and
- 3) \$48,341.15.

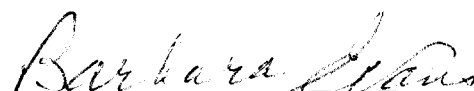
The Claims Lists were returned to the Accounting Department.

Contract – The Commissioners signed a Contract between Missoula County and Sirius Construction, Inc., for the 4<sup>th</sup> floor remodel of the Courthouse Annex. The Date of Commencement is March 8, 2004 and the Substantial Completion Date is October 29, 2004. The Contract Sum is \$1,054,200.00. All other terms and conditions are set forth therein.

Board Appointments – The Commissioners approved and signed three (3) letters, dated March 15, 2004, reflecting the following board appointments:

- 1) Appointment of Laurie Jerin, Missoula, as the "alternate member" of the Missoula Planning Board. Ms. Jerin's term will run through December 31, 2006;
- 2) Appointment of Jim Streeter, Missoula, as the "2<sup>nd</sup> alternate member" of the Missoula Aging Services Governing Board. Mr. Streeter's term will run through December 31, 2006; and
- 3) Appointment of Margaret McManus, Missoula, as the "1<sup>st</sup> alternate member" of the Missoula Aging Services Governing Board. Mr. Streeter's term will run through December 31, 2006.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, MARCH 15, 2004**

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

Claims Lists – The Commissioners signed three (3) Claims Lists, dated March 11, 2004, with the following grand totals:

- 1) \$19,405.84;
- 2) \$16,316.93; and
- 3) \$2,634.66.

The Claims Lists were returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 12, 2004, with a grand total of \$4,342.64. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated March 15, 2004, with the following grand totals:

- 1) \$49,614.92; and
- 2) \$595.79.

The Claims Lists were returned to the Accounting Department.

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming VIP Travel, Northfield, MN, as applicant for Seeley Lake Elementary SD #34 Warrant #23104497, issued January 21, 2004 on the Missoula County SD #34 Fund in the amount of \$342.40 (for airline ticket to AASA Conference), which was not received in the mail. No bond of indemnity is required.

**TUESDAY, MARCH 16, 2004**

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

Claims Lists – The Commissioners signed three (3) Claims Lists, dated March 15, 2004, with the following grand totals:

- 1) \$10,868.30;
- 2) \$23,536.95; and
- 3) \$2,529.61.

The Claims Lists were returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated March 16, 2004, with the following grand totals:

- 1) \$29,291.44; and
- 2) \$6,343.91.

The Claims Lists were returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Lease Amendments – Chairman Evans signed Amendments to the original Lease Agreement (with Option to Purchase), dated January 19, 1993, between Missoula County and Friends to Youth, Inc. ("Lessee") for the lease of a tax-deed parcel of land located in Gateway Gardens #2, Lot 2, Missoula County. The Lease is extended for another 10 years beginning January 1, 2004, and \$10.00 has been received from Friends to Youth for rent (\$1.00 per year). The Lease is amended to be retroactive to the 27<sup>th</sup> day of January 2004, and the Lessee's mailing address is noted as 1515 East Broadway. The document was forwarded to Laura Chema at Friends to Youth for signature and return.

Amendment – The Commissioners signed an Amendment to the 2003-Missoula TDM Planning Agreement (CM 8199(64)), dated August 5, 2003, between the Montana Department of Transportation and the Missoula Office of Planning and Grants. The Amendment, effective January 13, 2004, is a budget revision which transfers \$6,234 from Personnel to two Community-Wide Outreach subcategories. All other terms and conditions are set forth therein. The document was returned to Melissa Wangler at Missoula In Motion for further signatures and handling.

Memorandum of Understanding – The Commissioners signed a yearly Memorandum of Understanding ("MOU") between Missoula Aging Services, Missoula Senior Service Corps, and the Retired and Senior Volunteer Program ("RSVP") for the coordination of volunteers at Missoula County. All terms and conditions are set forth therein. The MOU was returned to Marie Pruitt in Human Resources for further signatures and handling.

Agreement – Chairman Evans signed an Agreement (#2004-13-04-11), dated March 1, 2004, between Missoula County and the Montana Department of Transportation (State Highway Traffic Safety Office) for the provision of funds for traffic enforcement, including radar units, in-car video cameras units, and PBT units for the Sheriff's Department. The total estimated project costs are \$20,200.00. The contract term will end on September 30, 2004. All other terms and conditions are set forth therein. The document was returned to Sheriff Mike McMeekin for further handling.

Resolution No. 2004-037 – The Commissioners signed Resolution No. 2004-037, dated March 16, 2004, a Budget Amendment for District Court Grants, reflecting \$14,900.00 in Revenue from Grants in Youth Court from previous fiscal years that was not used. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Board Appointment – The Commissioners approved and signed a letter, dated March 22, 2004, to Jacqueline Cohen, Lolo, confirming her appointment as a "regular member" of the Lolo Water and Sewer (RSID 901) Board. Ms. Cohen's term will commence immediately and run through June 30, 2006.

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

**WEDNESDAY, MARCH 17, 2004**

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

Claims List – The Commissioners signed the Claims List, dated March 17, 2004, with a grand total of \$959.94. The Claims List was returned to the Accounting Department.

CHIEF ADMINISTRATIVE OFFICER MEETING

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

Resolution No. 2004-038 – The Commissioners signed Resolution No. 2004-038, dated March 17, 2004, a Budget Amendment for the Health Department, reflecting Revenue for Public Health Emergencies from an expired PHE contract (#03-07-4-61-032-0) in the amount of \$42,003, which needs to be separate from FY 04-05 contract. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Resolution No. 2004-039 – The Commissioners signed Resolution No. 2004-039, dated March 17, 2004, a Budget Amendment for the Health Department, reflecting additional unanticipated Revenue for Public Health Emergencies in the amount of \$7,596 from a PHE contract (#04-07-4-61-033-0). For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Addendum – The Commissioners approved and Chairman Evans signed a Participating Addendum, Western States Contracting Alliance ("WCSA"), Public Safety Communication Contract (#02702), dated March 17, 2004, for microwave radio equipment for a county-wide communications system. WCSA is a purchasing group made up of 15 western states, including Montana. Approved is the use of WCSA's bid for the purchase of the communications system at exceptionally good prices. The document was returned to Jane Ellis in Emergency Services for further signatures and handling.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-028 for District Court, reflecting \$21,000 for a Missoula County grant to the State Supreme Court Administrator to continue funding of the local juvenile intensive supervision program until June 30, 2004.

Contract – The Commissioners approved and Chairman Evans signed a Contract (#2004) between the Montana Supreme Court, Office of the Court Administrator, and Missoula County for the provision of state staff resources to continue work assignments delineated by the Juvenile Accountability Incentive Block Grant ("JAIBG") program application. The total shall not exceed \$21,000 (for two full-intensive Probation Supervision Officers at the rate of \$10.81 per hour plus state benefits). The term will be March 1, 2004 through June 30, 2004. All other terms and conditions are set forth therein. The document was returned to Glen Welch at Youth Court for further signatures and handling.

Notice of Hearing – The Commissioners approved and Chairman Evans signed a Notice of Hearing regarding the Missoula County Dust Palliative Policy. The current application of dust palliatives on County roads has created some adverse consequences. The hearing will be held at the Commissioners' regularly scheduled weekly public meeting on Wednesday, March 24, 2004 at 1:30 pm in Room 201 of the Missoula County Courthouse Annex.

**PUBLIC MEETING – March 17, 2004**

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Jean Curtiss, Commissioner Bill Carey, Deputy County Attorney Colleen Dowdall, Deputy County Attorney Marnie McClain, County Public Works Director Greg Robertson and County Engineer Joe Jedrykowski.

**Pledge of Allegiance**

**Public Comment**

None

**Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$287,116.65. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Decision: Petition to Abandon a Portion of Unnamed Book 1 Road – Frenchtown Area**

**Decision: Petition to Abandon a Portion of the Frenchtown to Jocko Valley Trail – Frenchtown Area**

This is a petition to abandon "Unnamed Book 1 Road located in the southwest one-quarter of Section 31, Township 15 North, Range 20 West where it enters the north boundary of the southwest one-quarter of Section 31 and where it leaves the south boundary of the southwest one-quarter of Section 31, Road Book 1 – Road taken from USFS Maps."

The reasons for the request are as follows:

1. Property is being subdivided.
2. Road does not physically exist anymore.
3. Book 1 Road does not begin or end near a County road or State highway.

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The following landowners have been notified: H Lazy Heart LLC, 10905 Butler Creek Road, Missoula, MT 59808.

This is a petition to abandon "Frenchtown to Jocko Valley Trail, located in the southwest one-quarter of Section 6, Township 14 North, Range 20 West and Tract 1 of COS 358 (southeast one-quarter of Section 1, Township 14 North, Range 21 West) where it enters Tract 1 of COS 358 on the west boundary and where it leaves Section 6 on the south boundary of Section 6, a GLO Trail, 1870 GLO notes describe the trail as 'Trail from Frenchtown to the Jocko Valley.'"

The reasons for the request are as follows:

1. Property is being subdivided.
2. Road does not physically exist anymore.
3. Travel is now serviced by Interstate 90, the Frontage Road and Highway 93.

The following landowners have been notified: H Lazy Heart LLC, 10905 Butler Creek Road, Missoula, MT 59808.

Greg Robertson stated that pursuant to State statute, he and Commissioner Curtiss conducted a site visit of both of these road vacations. They are located on part of a subdivision currently under construction. There was no visible evidence of the roads, nor is there any need for them. Based on the site review, it is recommended that the petitions be granted.

Chairman Evans asked for public comments. There was none.

Commissioner Curtiss stated that she accompanied Greg on the site inspection. The roads were not visible on the ground and she concurred with Greg's recommendation.

Commissioner Curtiss moved that the Board of County Commissioners grant the petition to abandon "Unnamed Book 1 Road located in the southwest one-quarter of Section 31, Township 15 North, Range 20 West where it enters the north boundary of the southwest one-quarter of Section 31 and where it leaves the south boundary of the southwest one-quarter of Section 31, Road Book 1 – Road taken from USFS Maps." Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners grant the petition to abandon "Frenchtown to Jocko Valley Trail, located in the southwest one-quarter of Section 6, Township 14 North, Range 20 West and Tract 1 of COS 358 (southeast one-quarter of Section 1, Township 14 North, Range 21 West) where it enters Tract 1 of COS 358 on the west boundary and where it leaves Section 6 on the south boundary of Section 6, a GLO Trail, 1870 GLO notes describe the trail as 'Trail from Frenchtown to the Jocko Valley.'" Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

#### **Continuation of Hearing (From March 3, 2004): Floodplain Variance (Pruyn Rip-Rap)**

Chairman Evans reopened the public hearing.

Jackie Cohen, 10350 Lakewood Place, stated that her house was on a cul-de-sac near one of the Lolo Lakes. She is making her statement for the record. In 1996, she was part of a multi-neighborhood group that sandbagged a quarter mile stretch of the Bitterroot River, upstream from the property being considered for riprap. It is about 2 miles upstream and is known as Jim Adair's property. The property was sandbagged to keep the river from flooding the homes and from flooding infrastructure, including the Lolo sewer plant. Since that time, various neighbors have met as a committee with various people, including the past Floodplain Administrator, officials from the Army Corps of Engineers and State Natural Resource Conservation officials, about plans to prevent future flooding of the river. They have communicated with the Board of County Commissioners since 1997 about their quandary and possible resolutions to future flooding. In 1997, the Commissioners told the residents they could not riprap, it was not allowed. She is here to monitor today's discussion and outcome. If riprap is allowed, then it could be re-included in their list of possibilities.

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

Marnie McClain stated that Todd Klietz had distributed some photographs of the property. There were several people at the on-site visit, including all three Commissioners, Greg Robertson, Todd Klietz, herself, Dr. Pruyn and two representatives from JTL Group, Mike Welling and another gentleman. Dr. Pruyn and Mike Welling showed what the scope of the project entailed. Dr. Pruyn talked about his uses of the property in the past, for calving, which was also his planned continued use. There are no structures on the property. It was noted that rock had already been delivered to the site to be used as riprap. There are no structures on the parcel that are threatened by erosion. Dr. Pruyn pointed out several USGS monitoring wells on the property. Since the hearing on March 3, 2004, two letters in opposition have been received, one from Montana Trout Unlimited and one from the Clark Fork Coalition.

Commissioner Curtiss stated that the recommendation of denial from the Floodplain Administrator and County Attorney's Office has not changed since the hearing on March 3, 2004.

Commissioner Carey stated there are recommendations from the Floodplain Administrator and the County Attorney to not allow the variance. Hard work has been done to restore a river system east of Missoula at the confluence of the Clark Fork and Blackfoot Rivers, to remove the dam and sediments and restore those rivers. It would be a step backward to begin riprapping on the Bitterroot River. He cannot support this variance request.

Chairman Evans stated that in Montana, land is just as valuable as buildings. There have been wars fought over land. This area has been previously riprapped. She did not see anything wrong with allowing Dr. Pruyn to re-riprap to save his land. When soil washes into a river, it is not good for the fish. She would support this variance request because saving land is just as valuable as saving a building.

Commissioner Curtiss moved that the Board of County Commissioners deny the variance requested by Dr. Earl Pruyn from Section 5.02.B.3 of the Missoula County Floodplain Regulations to allow existing riprap along the Bitterroot River to be repaired, based on Missoula County Floodplain Regulations that allow riprap only to protect buildings and public testimony. Commissioner Carey seconded the motion. The motion carried on a vote of 2-1 (Chairman Evans opposed).

#### **Hearing: Call for Transportation Project Proposals (CTEP)**

Joe Jedrykowski presented the staff report.

Under the CTEP guidance and regulations, for the last three weekends, advertisements have been placed to give the public an opportunity to submit projects. He has also had some contact with the public. He asked if there was anyone in the audience that had a project they would like to propose that he was not aware of. No one came forward.

He distributed two maps of potential projects. One project is in the Seeley Lake area. Community leaders have proposed a pedestrian trail along Riverview Drive from Highway 83 west to the Clearwater River, approximately three-quarters of a mile. They would like to have the County investigate installing a walkway adjacent to the north side of the road. They have declared it to be an unsafe area for school children. Community leaders said they have talked to property owners about right-of-way issues. Those will have to be investigated. They are asking for a 12 foot walkway for mixed use, including winter use as a snowmobile path. He was not sure that was allowable. An 8 foot walkway for pedestrian and bicycles only would probably be more reasonable, but that can be worked out later. The other proposal for Seeley Lake is adjacent to Boy Scout Road. There is about three-quarters of a mile from Highway 83 west to "C" Street. Currently, they are using a Fish, Wildlife and Parks grant to build a walkway/snowmobile trail on the north side of the road. The proposal was to use CTEP funds in the future to pave the path. The plan right now is for a gravel surface and they would like to see it paved. That would probably be appropriate use of CTEP funds. The issue of 12 feet will still have to be negotiated. If feasible, he would recommend that both projects go forward at some time in the future. Considering other obligations in the CTEP program, he estimated it would be fiscal year 2006 or 2007 before the projects could be constructed. Neither project would be expensive.

Chairman Evans asked if Joe would explain what CTEP funds can be used for.

Joe Jedrykowski stated that CTEP is part of the Federal transportation bill. It provides Federal transportation dollars to go to community enhancement projects such as walkways. Under the program, which is administered by the Montana Department of Transportation, the Federal government funds approximately 86.5% of the money and the County has to contribute only 13.5%. It helps counties to achieve improvements in communities and to acquire pedestrian facilities. In Missoula County, the share is about \$225,000 of Federal money per year. Another project under consideration is west of Frenchtown and east of Huson, along the Frontage Road on the north side of Interstate 90. Several years ago, the Commissioners approved a CTEP project which went from Mill Creek, east of Frenchtown, to the Huson interchange. Because of the size of the project and the amount of money needed, it was decided to break the project into three phases. Phase I has been completed, which goes from Touchette Lane east to the Frenchtown/I-90 interchange. The construction of Phase II will be done this year, going west from Touchette Lane to Houle Creek and east from the I-90 interchange to Mill Creek. Phase III will be from Houle Creek to the Huson interchange, hopefully to be completed within the next two years. That will complete that entire walkway for a total of 4.5 miles along the Frontage Road. This has been approved, but he wanted to bring to the Board's attention the construction schedule. A project was approved last year in the Spurgin/27th Street area. A portion of that walkway will go to the Little League fields and another to Big Sky High School. He hoped to complete that project next year and the following year do a combination of the Seeley Lake projects and the Frenchtown project.

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

Commissioner Carey moved that the Board of County Commissioners approve the proposals presented in the Seeley Lake area for future CTEP projects in fiscal years 2005 or 2006. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### **Consideration: Anderhaus Estates (2 lots on 2 acres) – South Third Street West**

Liz Mullins, Office of Planning and Grants, presented the staff report.

Amy Hauschild, represented by PCI, is proposing to create Anderhaus Estates Subdivision, a 2 lot residential subdivision on 2 acres. The property is located on the south side of South Third Street West, approximately 200 feet west of Tower Street. There is an existing home which accesses onto South Third Street West.

The property is zoned C-RR1 (Residential), which allows one dwelling unit per acre, which is the proposed density. The Missoula Urban Area Comprehensive Plan 1998 Update recommends a density of two dwelling units per acre.

There is an irrigation ditch adjacent to the property along the southern boundary which is not shown on the plat. The application packet states that the property has water rights to this ditch. The applicant is proposing a 15 foot irrigation pipe easement along the eastern boundary of Lot 2. An easement for the off-site irrigation ditch may be necessary, if the centerline of the off-site ditch is within 10 feet of the property line, to meet the 20 foot ditch easement requirement. This has been recommended as a condition of approval.

The applicant is proposing to share the existing driveway with proposed Lot 2. The surface width is paved to 11 feet, within a 20 foot easement. The development covenant requires driveways in excess of 150 feet in length to have approved turnarounds and a minimum unobstructed width of 20 feet. There is a shared Driveway Maintenance Agreement provided in the packet. The agreement needs to be revised to reflect that there are only two lot owners.

There are four variances being requested. The first is from the requirement for a pavement width of 32 feet to 44 feet for South Third Street West. South Third Street West is a 26 foot wide paved public road. The Public Works Department noted that a two lot subdivision would not contribute sufficient traffic to warrant increasing the width to 32 feet. The

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RSID/SID wavier to address future improvements to South Third Street West will mitigate development costs of future improvements. The Office of Planning and Grants recommends approval of the variance request.

The second variance request is from the requirement for boulevard sidewalks on South Third Street West. There are no walkways, facilities or easements in the area near the proposed subdivision. The Public Works Department does not object to the variance request. South Third Street West is aligned in the southern portion of the 60 foot right-of-way and placing a boulevard sidewalk on the north side of the street would require additional right-of-way. The RSID/SID statement for future improvements includes pedestrian facilities to South Third Street West. OPG recommends approval of the variance request.

The third variance request is from Section 3-2(7) of the Missoula County Subdivision Regulations requiring curbs and gutters on South Third Street West. Curb and gutter are lacking in the vicinity. The Public Works Department supports the variance request because an additional home does not warrant the need for drainage improvements. OPG recommends approval of the variance request.

The fourth variance request is from Article 3-3(1)(D)(iii) to not require Lot 2 to abut on and have access to a public or private street or road. There is no way to divide the parcel so that both lots front on South Third Street West. The Public Works Department does not object to the variance request. In addition, 30 feet of right-of-way is being proposed on the south side of the subdivision, to provide an opportunity for a future possible connection to Tower Street. Once this right-of-way is developed, the requirement for the variance will be eliminated. The Office of Planning and Grants recommends approval of the variance request.

Other conditions of approval include:

- The street RSID/SID wavier statement on the face of the plat shall specify South Third Street West.
- The following statement shall appear on the face of the plat and refer to the conditional public access easement:

The owners dedicate a 30 foot right-of-way for purposes of a public roadway across Lot 2 of the Anderhaus Estates Subdivision as shown on the subdivision plat, conditioned upon the right-of-way being used as a roadway at the time that it is needed to serve future subdivision on the parcel to either the west or east of the Anderhaus Estates Subdivision. The lot owners and future owners of lots in the Anderhaus Estates Subdivision will not be responsible for the construction of the future roadway if construction of the future roadway is attributable to division of land to the west or east. No structures, permanent improvements or utilities shall be placed with the right-of-way so as to interfere with the eventual use of the right-of-way as a public roadway."

- The applicant shall donate \$100 per lot to the Missoula Rural Fire District large diameter hose fund prior to final plat approval (recommended by the Missoula Rural Fire District).
- A revegetation plan shall be reviewed and approved by the Missoula County Weed District prior to final plat approval.

Becky Weaver, Professional Consultants, Inc., developer's representative, thanked Liz for her work on this proposal. They are in agreement with the conditions as recommended. She is available to answer any questions the Board may have.

Commissioner Curtiss stated there is a 60 foot right-of-way on South Third Street West but to install a sidewalk would require additional right-of-way. Would there be room for the boulevard sidewalk if the street were centered within the 60 foot right-of-way.

Greg Robertson stated there would be more than adequate room. If something were to be installed at some time in the future, it would be on one side or the other of the road.

Chairman Evans asked for public comments.

Dianna Harris, 625 Tower, Lot 3 of the Rush Addition, stated that the proposed subdivision is in her back yard. She had several questions. The first was regarding the irrigation easement. She pays taxes to the Irrigation Ditch Company but has no access to the water. She was wondering if she could attach to the pipe that will be installed for this subdivision. In 1990 when she built her home, she spoke with the Irrigation Company who required culverts for the front ditch but it was not extended. When she called about attaching to the ditch, she was told she was only entitled to a miner's inch of water and that she would have to run a line to the ditch to get water. She was wondering if she could have access to this easement. Another issue was what size the house would be and where it would be located. She did not want the front of the house facing her back yard. She also has concerns about the access to the house. Another issue was any outbuildings that might be constructed. The development on Stallion Lane has three \$300,000 homes on an acre each. One home has the entire back yard filled with garages and other outbuildings and it messes up the whole look of the acre in a residential area. The height of the building was also an issue.

Becky Weaver stated the easement shown across the east side of Lot 2 on the plat will allow Lot 1 to access the irrigation ditch. It does not provide access for Rush Addition. Rush Addition's easements, or lack thereof, would have been included during that subdivision approval process. This easement will only be for the use and benefit of Lot 1 of this subdivision. It was not known if there will actually be a pipe to access the ditch. The Missoula Irrigation District required an easement so that both lots have access to the ditch and the developer was okay with providing the easement. A building envelope is shown on the plat and they intend to fully comply with zoning. The front setback is 25 feet, the side setback is 15 feet, the rear setback is 25 feet, the maximum building height is 30 feet and the density is one per acre. The north side of the lot would be considered the front, that is the direction it is being accessed.

Lynn Roberts, 655 Tower, asked about the conditional easement that could be used to access Stallion or Tower. Where would it come through.

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Liz Mullins stated that would occur if additional right-of-way was dedicated through future subdivision to encompass a 60 foot easement that runs to the east/west from Stallion to Tower, or possibly connect only one way to the west or east.

Lynn Roberts stated the additional right-of-way would have to be through the Rush Addition.

Liz Mullins stated that would be correct, it would be centered on each side along the southern boundary.

Commissioner Curtiss stated that this is done to reserve the right-of-way if there is subdivision in the future. The road will not be built and these people will not have to pay for the road unless property to the south subdivides in the future.

Lynn Roberts stated that he is not allowed to divide his property, the covenants require one house per acre.

Commissioner Curtiss stated that things like covenants and zoning can change in the future. The County is looking at the overall picture to provide for possible future connections. The conditional easement prevents people from putting something in the right-of-way to prevent it from being used as a road in the future.

Lynn Roberts stated that when he built his house in 1992, he had to put in a double drainfield because of his property's location to the ditch in front and the ditch in back. He also had to pay a fee to get a variance to build his house because of the ditch in back. He doesn't understand why he doesn't have access to that ditch.

Chairman Evans stated that legislation was passed due to the situation with the ditch. Many people were paying who did not have access to the ditch. The legislature allowed a one year time period for people to protest and withdraw from the irrigation district. The County has no control over the ditch company.

Carol Andersen, 525 Tower Street, at the corner of Third Street and Tower, stated she lived just east of the first house of the proposed subdivision. She is also speaking for Fred and Donna Morris who live at 555 Tower Street. She and the Morris' have no objection to the subdivision. The Jacobsen family, directly to the west, also have no objections to the proposal.

There were no further public comments.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Article 3-2(3) of the Missoula County Subdivision Regulations requiring a pavement width of 32 feet to 44 feet for South Third Street West, a collector street, based on the findings of fact set forth in the staff report; approve the variance request from Article 3-2(8)(A)(ii) of the Missoula County Subdivision Regulations that requires all rural subdivision within the Urban Growth Area with a lot frontage of 175 feet or less to construct concrete boulevard sidewalks on South Third Street West, based on the findings of fact set forth in the staff report; approve the variance request from Section 3-2(7) of the Missoula County Subdivision Regulations to not provide curbs and gutters along South Third Street West, based on the findings of fact in the staff report; and approve the variance request from Article 3-3(1)(D)(iii) of the Missoula County Subdivision Regulations that requires Lot 2 to abut on and have access to a public or private street or road, based on the findings of fact set forth in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

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

#### **Anderhaus Estates Subdivision Conditions of Approval:**

##### **Roads and Driveways**

1. The street RSID/SID waiver statement on the face of the plat shall specify South Third Street West. *Subdivision Regulations Section 3-2(3)(F) and OPG recommendation.*
2. The following statement shall appear on the face of the plat and refer to the conditional public access easement:

“The owners dedicate a 30 foot right-of-way for the purposes of a public roadway across Lot 2 of the Anderhaus Estates Subdivision as shown on the subdivision plat, conditioned upon the right-of-way being used as roadway at the time that it is needed to serve future subdivision on the parcel to either the west or east of the Anderhaus Estates Subdivision. The lot owners and future owners of lots in the Anderhaus Estates Subdivision will not be responsible for the construction of the future roadway if construction of the future roadway is attributable to division of land to the west or east. No structures, permanent improvements or utilities shall be placed within the right-of-way so as to interfere with the eventual use of the right-of-way as a public roadway.” *Subdivision Regulations Article 3-2(1)(E), Public Works Department and OPG recommendation.*

3. The Driveway Maintenance Agreement shall be revised to reflect that two lots share the driveway. *Subdivision Regulations Article 3-2(1)(iii) and OPG recommendation.*

##### **Fire Protection**

4. The applicant shall donate \$100 per lot to the Missoula Rural Fire District large diameter hose fund prior to final plat approval. *Missoula Rural Fire District recommendation.*

##### **Noxious Weeds**

5. A revegetation plan shall be reviewed and approved by the Missoula County Weed District prior to final plat approval. *Subdivision Regulations Section 3-1(1) and Missoula County Weed Board recommendation.*

##### **Irrigation Ditch**

6. An irrigation ditch easement shall be placed along the southern boundary of Lot 2 if the off-site irrigation ditch is 10 feet from the property line. The easement should be 10 feet from the centerline of the ditch, to be reviewed and



approved by the Missoula Irrigation Ditch Company. *Subdivision Regulations Article 3-1(1), 3-6 and OPG recommendation.*

**Continuation of Hearing (From February 18, 2004): Carlton Heights-Maple Creek Addition #2 (5 lots on 28.31 acres) – west of U.S. Highway 93, south of Carlton**

Monte Sipe, Office of Planning and Grants, presented background on the proposal. He handed out three documents, a letter from Gordon Geiser of the Florence Rural Fire District and two e-mail received after the last hearing.

This project was originally presented to the Planning Board on February 3, 2004. At that time, staff presented a recommendation of denial. At the outcome of that hearing, the Planning Board also passed on a recommendation of denial to the Board of County Commissioners. It was presented to the Commissioners on February 18, 2004. The public hearing was opened, public testimony was taken and a presentation was given. The applicant requested an extension which was granted, which brings the proposal to today's meeting. He did not feel it was necessary to give the entire presentation as most of the information was already on record. Staff's recommendation is still for denial of the subdivision, based on the findings of fact contained in the staff report as presented at the February 18, 2004 meeting.

Nick Kaufman, WGM Group, Inc., developer's representative, thanked everyone for all the time and effort involved during this process. He gave a power point presentation on the project. The Maclay Ranch is 3,500 acres of ranchland and represents six generations of the Maclay family. In five generations, no development was ever done on the ranch. It was the first ranch to initiate zoning because of the pattern of development that was happening around and adjacent to the ranch. The MacIntosh Manor plats were part of the Schrader Ranch, large rectangular 10 acre tracts that were platted around the turn of the century with no regard to topography, drainage, slope, etc. While the Schrader Ranch was being broken up by occasional sale, gifts to family members, etc., none of that was happening on the Maclay Ranch. The ranch began a master planning process and participated in the development of the Lolo Comprehensive Plan. A golf course design was looked at on a piece of the property that has a significant amount of floodplain. Mr. Maclay hired an architect to look at a village concept, in conformance with the recently adopted Lolo Comprehensive Plan. At about this same time, cattle were removed from the ranch. The ranch is the source of income for Mr. Maclay, his parents and his family. In order to generate income, Mr. Maclay relocated some boundaries and put some homes below the ridge line in conformance with the topography and outside migration routes. Those lots have been sold. Mr. Maclay also did a 5 lot summary subdivision for commercial use with severely restrictive covenants, however, none of those lots have been sold. Then Mr. Maclay did a 5 lot residential subdivision called Maple Creek and some of those lots have sold. Mr. Maclay then came to WGM with a proposal for a 70 lot subdivision and 4 additional lots at the end of the Maple Creek subdivision. During a neighborhood meeting, information was exchanged which led them to re-examine some of the development proposed. After re-examination, it was determined that the 70 lot subdivision could not be done without sewer and water systems. The proposal is now for a 5 lot subdivision, taking one existing lot from the original Maple Creek subdivision and adding four additional homesites. The Maclay Ranch did not ask for a new highway to be built through their property but that was what was demanded by society because of all the development around the ranch and in the Bitterroot. The irrigated agricultural land on the Maclay Ranch is proposed to remain as open space. This irrigated agricultural land is especially important because the water rights in Maple Creek and McClain Creek allow gravity irrigation with no power usage. At the neighborhood meeting, folks said that Sun Valley Road did not meet County standards, it is too steep and too narrow. The only way to fix the road is to get additional right-of-way from adjoining property owners. Granting that right-of-way was doubtful because it would allow for additional development. They have been working on a connection between Sun Valley Road and King Road to an existing County road, McClain Creek Road. Missoula County opened McClain Creek Road last year all the way to Forest Service property. The realignment of McClain Creek Road takes it out of the low bottom riparian area and sensitive wildlife habitat to a better location and creates a connection between King Road and McClain Creek Road. There has been development adjacent to the north boundary of the Maclay Ranch. One of the most significant areas of elk habitat is in the northern portion of the ranch and in the irrigated agricultural areas. There were 80 head of elk grazing there just a few weeks ago, in spite of all the development. There has been a lot of development activity outside the Maclay Ranch, most of which was winter range for elk at one time. The homesites created by boundary relocation created no new lots, but rearranged them sensitive to topography. The road that accesses these homes is not seen because it is built parallel to the contour lines. North of the Maclay Ranch boundary is extensive development. Adjacent to the middle portion of the Maclay Ranch is a gravel pit owned by Stan Hendrickson. All the gravel that went to improve Highway 93 was taken from this pit. Highway 93 bisects the Maclay Ranch. The subdivision being discussed today is on the southern portion of the ranch. The development pattern adjacent to the southern boundary is residential. On land just to the southwest of the ranch boundary, the owner brings in a trailer every summer and lives on his land. Four additional lots in the Maple Creek subdivision were chosen because of the settlement pattern adjacent to the southern portion of the ranch. Slopes over 25% and the riparian areas were excluded as building sites on the first Maple Creek subdivision. The areas not excluded left a portion of Lot 5 available for building sites and also provided a small triangular piece for a homesite, however, it could be problematic to construct a driveway due to steep slopes and riparian area. This concluded the power point presentation.

Using a large drawing of the Maclay Ranch and surrounding area, King Road was identified. It starts at a 1.3% grade at the intersection, climbs at 6.5%, goes around a corner at 10%, then climbs at grades ranging from 3% to 10%. The Planning Board recommended denial of this subdivision by only one vote, it was not unanimous. A significant issue for the Planning Board was the building site in the northern portion of the lot up the steep slope and across the riparian area. Winter range for elk is not timbered country, it is open fields. The open areas are much more important for elk than timbered area. If this northern building site is eliminated, the development is moved as far south as possible away from the most important wildlife habitat. The developer is willing to forego that building site and presented some alternatives that would cluster the homes on the site. Alternative #2 clusters the homes on 10 acres of the 28 acre site. Alternate #3 is the most difficult, it takes the homesites off the entire western portion of the property. It is difficult because there is settlement all around it. If no more road is built than what currently exists, the homes can be clustered as shown on the alternatives.

There are some specific issues about this subdivision that are most important. They deal with fire protection, access and the effects on wildlife. Access to this subdivision is via a County approved road. They submitted to Public Works their plans for the extension of the road. There is a letter from Greg Robertson regarding his review of the plans and comments. They have just responded to those comments which Greg hasn't had time to review. That should take care of concerns

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about what type of road the fire department will be traveling on for access. The second comment with regard to fire protection is the installation of a hydrant that flows at 360 GPM with compacted access and loading pad approved by the fire department. There is a gravel road between Old Highway 93 and the new highway. Off that gravel road on the north side is an existing well. They constructed a 16 foot wide pad with 30 foot compacted radiuses and installed a hydrant. There is a letter from Gordon Geiser, Chief of the Florence Rural Fire District, stating that the flow and approach are acceptable. Additionally, Mr. Geiser said the fire district recently used Lamar Trail South and Maple Creek Road to respond to a wildland fire and fire district apparatus were able to negotiate the road. They will also require residential fire sprinklers for all new residential construction, as shown in the covenants and he would like to work with the County Attorney's office on a condition so that can be enforced. The covenants will incorporate certain fire protection standards (as stated in the Pattee Canyon Zoning District 4 Urban Wildland Standards): a) roofing materials may be only Class A or B fire rated; b) roof pitches must be a minimum of 4/12; c) dead end driveways shall have a fire department approved turnaround within 150 feet of the residential structure; d) create a defensible space by clearing vegetation from around structures in accordance with fire safety guidelines available from the U.S. Forest Service or the fire department; and e) residential fire sprinklers are required. For emergency egress, there exists along the southern boundary of the site, a forest access road. This road is not intended or designed for fire apparatus but is available for emergency egress from the site. The site can be accessed either by Sun Valley Road or Carlton Creek Road via King Road, all three are County roads. Lamar Trail South and Maple Creek Road have been reviewed and approved by Missoula County. Proposed new construction on Maple Creek Road has been reviewed by Missoula County and concerns have been addressed. Future plans call for the connection of Lamar Trail South to McClain Creek Road to provide an additional access to the site. The projected time frame for construction is the summer of 2004. Fish, Wildlife and Parks has some concerns, primarily that this might have an impact but they are not sure what may happen on the rest of the ranch. What happens on the rest of the ranch might be of significant impact. What is being reviewed today is not what's happening on the rest of the ranch. If anything happens on the rest of the ranch, it will come before this Board for review. Cumulative impacts of the settlement patterns to the south and north of the ranch have resulted in the elk herd wintering on the Maclay Ranch. They are trying to subdivide in an area that is least important to elk habitat. FWP's letter states: "An individual subdivision by itself may not have significant major impact on key habitat and wildlife populations. However, the unknown number of future subdivisions and land use changes that follow would compromise the area's suitability as elk winter range and multi-species habitat values. The Carlton Heights-Maple Creek Addition No. 2 is just such a situation. It is a relatively small project (28 acres) on important winter range, and by itself might have a relatively minor impact." The project being reviewed is adding 4 additional lots at the end of an existing road in an approved subdivision.

Scott Leibenguth stated that his house was shown in some of Mr. Kaufman's slides. His house is on McClain Creek Road directly behind Stan Hendrickson's gravel pit. Traffic from this subdivision will have an impact on him. If all that money is going to be spent on constructing this road, more than 4 or 5 houses will be built. There are elk that winter on the north end of the property. 60 to 80 head of elk have been seen behind his house, right where this project is proposed. There is an elk calving ground in the middle of where the road is proposed to join with McClain Creek Road. Will McClain Creek Road then be paved. This small subdivision has a minor impact on elk habitat, but the question remains of what happens when 5 more homes are built, then 5 more and so on. All have minor impacts but they add up to a major impact which needs to be taken into consideration. All the traffic from these homes ends up on Old Highway 93 and the new highway, which is already a dangerous intersection. He is not against this development, but the whole picture needs to be looked at. The roads being installed are not just for 4 or 5 houses.

Commissioner Carey stated that he agreed that cumulative impact needs to be addressed. However, legal counsel tells the Board that they cannot do that, they must look at each project individually. He views that as a flaw in State law, but that is the parameter the Board must work within.

Del Zuelsdorf stated he had several concerns. He has some old pictures of the roads in the area and the roads are a major concern. He has a traffic count letter from Clint Harris that shows the increase in traffic from 1977 to 2000 on Sun Valley Road. The traffic count was conducted 300 feet west of Old Highway 93. In 1977, there were 77 cars on June 5th. In 1993, there were 326 cars on June 3rd. On June 23rd of 2000, there were 417 cars. McClain Creek Road was closed in 1987 to the benefit of the Maclays and they received a monetary settlement for landslide damage. In 1986, there were 228 cars on Carlton Creek Road, as counted 200 feet west of Old Highway 93; in 1995, there were 290 and in 1999 there were 472. This road also shows a steady increase. McClain Creek Road will probably relieve some of this pressure, but will the taxpayers pay for the upgrade of the road. Many issues have already been addressed by Mr. Kaufman, some of which he agrees with. There are some issues that were mis-stated. He stated that the Maclays have a right to make money off their land. That is correct but does it need to be a detriment to and at the expense of the neighbors. This subdivision is only the start of development on the ranch. Mr. Kaufman talked about a golf course. This land is split by the highway and the Maclays were compensated for that. They have access under the highway to their land east of the highway. They are not totally isolated. Wells are a critical issue. There are several wells in the area that are borderline but he did not know the gallons per minute rate. HUD requires 4 gallons per minute from a well. Does this create a "buyer beware" situation. Mr. Kaufman said that McClain Creek Road was opened last year, but according to the Forest Service representative, it was opened just this year because Mr. Leibenguth had the gate removed.

Joe Elliott stated he is a biologist and consultant in Missoula. He has been retained by the Maclays to look at the wildlife effects associated with this proposal. Mr. Kaufman has made several statement which he concurs with regarding elk and elk habitat. Most of the use by elk is centered on State land and the center section of the Maclay Ranch. Elk like open areas during the winter. The subdivisions around the Maclay Ranch have helped focus elk activity on the ranch. There have been a number of other factors that have influenced the ecology of elk on the ranch. Elk numbers in the last 20 years have increased about 300% throughout the Bitterroot Valley and throughout all of Montana. Since the early 1970's, elk numbers have increased dramatically due to subdivisions, increased population and FWP also introduced elk from the Wallace Ranch just over the hill from the Maclay Ranch. After that introduction, elk began to appear on the ranch as they were habituated to eating hay and grain. Logging that has happened in the Bitterroot benefits elk as it increased forage. They appear on the Maclay Ranch because there aren't many places for them to go to the north or south of the ranch. This proposed subdivision is largely in a forested area with little forage. Elk are looking for forage in the winter. This proposed subdivision is adjacent to other subdivisions. Disturbance already exists. Cumulative effects would occur with proposed development, but he is restricting his comments to this 28 acres. The effects of this subdivision on elk would be negligible. There was a statement made about elk calving area, but typically wintering elk calve as they move from winter

range to summer range. Elk seek out sheltered areas and he would expect calving to occur at higher elevations as they move to their summer range.

Scott Leibenguth stated he has lived there for 20 + years. In the draw above his property, he counted 76 elk that stayed there for almost 2 months during the spring calving season. Elk are present in that draw all the time, they were in his back yard last Sunday.

John Vore stated he was a wildlife biologist for Montana Fish, Wildlife and Parks for the Bitterroot Valley. He has worked with Mr. Maclay and his agents several times over the past few years on projects on the land. FWP has submitted four letters regarding development on his property. All of them have stressed the same thing, that the proposed subdivision is in elk winter range and it is FWP's concern about cumulative effects. The proposed subdivision is within one of the more important winter ranges on the west side of the Bitterroot Valley, north of Hamilton. In a December 16, 2003 letter to Mr. Kaufman, it states: "Elk winter range on the west side of the Bitterroot Valley is a relatively narrow band, about 2 to 4 miles wide along the mountain foothills and it extends roughly a mile or so into the grassland slopes east of the timbered forest edge. The upper parts of winter range also serve as elk calving grounds. As in most cases, elk use of winter ranges on the west side of the valley is not distributed uniformly. Some areas are traditionally favored more than others." FWP has 49 survey areas. All of the elk winter range in the Bitterroot Valley is divided into 49 separate survey areas which are defined by creeks or ridges. This proposal falls into the Mormon Creek/One Horse Creek survey area. "Of the 10 winter range survey areas on the west side of the valley, north of Hamilton, 4 of those, comprising 43% of the winter range, have harbored 72% of all the elk observed on spring census flights since 1965. The proposed subdivision is within one of these important survey areas, the Mormon Creek/One Horse Creek survey area. The survey area makes up 17% of the west side winter range north of Hamilton and has harbored 23% of all the elk observed during the spring flights since 1965, but in some individual years, including 1965, 1968, 1982, 1984-1988 and 2002, over 30% and up to 39% of all the elk have been observed there. At a more local level, elk also traditionally use portions of each winter range survey area more than others. Again, since 1965, some 65% of the elk observed on spring surveys in the 19 square mile Mormon Creek/One Horse Creek survey area, were seen on just 6 sections. More recently, since 1988, 97% of the elk observed have been on those 6 sections. Most of the elk in those 6 sections, 63% since 1965, and 68% since 1988, have been on the 5 private land sections. Since 2002, Fish, Wildlife and Parks has used GPS technology to pinpoint and record locations of elk groups seen during our spring flights. In those 2 years, all but 8 of 263 elk seen on the Mormon Creek/One Horse Creek survey area, were seen on those 6 sections." This is important elk winter range. As Mr. Kaufman pointed out, the grassland is important, as is the adjacent timber; that is where elk go to bed down and calve. Not all elk go to one area to calve. Elk will often time calve on their way back to summer range. Some elk spend the whole summer in this area and calve here and some move off and calve elsewhere. Elk are increasing statewide and have increased about 300% in the Bitterroot Valley. They haven't increased on this particular area as much as other areas. FWP has focused harvesting of cow elk on this area at the request of area landowners to try to control and reduce numbers. 100 cow elk tags were issued just for the area north of One Horse Creek. FWP prefers to look at habitat, that is the important thing. The potential is here for a lot more elk. Again, their main concern is the cumulative effects of continued development. Elk winter range is a critical portion of the year-round habitat and development compromises its suitability. It also compromises FWP management options and the public's ability to view, appreciate and utilize this public resource. They realize that 70% to 80% of the elk in the Bitterroot and statewide use private property. Private landowners are owed much for the habitat they provide. FWP looks forward to the opportunity to continue working with Mr. Maclay regarding wildlife consideration in the development of his land. Elk use is historical on this property, it is not recent. It has been happening since at least 1965.

Colleen Dowdall asked if Mr. Vore felt this portion of the ranch needs to be preserved for the elk.

John Vore stated that their letter says that the development being considered would probably have a minimal impact, but it is the cumulative effects that concern them. It is not this five lots or 28 acres, it's the next 5 lots and the next 15 lots and the next 20 lots that continue to erode elk winter range. FWP is not opposed to development. His area includes all of Ravalli County and the southern portion of Missoula County. In the last year, he has received over 55 subdivisions to review. They provide some comment on most of them; but substantive comments on few. Few of them are in habitat that is as important to wildlife as this one. That is why he is present today, to share this information.

Colleen Dowdall stated that given Mr. Maclay is interested in developing the remainder of his land, is there a way to develop that will mitigate the impacts on the elk.

John Vore stated there are ways to develop that would lessen the impact but would not mitigate the impact 100%. There will be an effect no matter what is done if there is development. He was glad to see some of the alternatives that were presented. Clustering will help mitigate and lessen the impact.

Colleen Dowdall stated that cumulative impact could mean that the last person who asks to develop is told he cannot. If any neighbors anticipate any development in the future, she would expect them to do so sooner rather than later to avoid being the last one. That is one of the reasons that it is difficult to address cumulative impact.

John Vore stated he agreed, but they are looking into the future. Many people look at cumulative effect as one thing after another until it falls off the end. It is actually that each little bit is a cumulative effect. Elk don't realize property boundaries.

Nick Kaufman stated that they are talking about responsibility. Four additional homes proposed adjacent to existing development is more responsible than developing in a migratory route. In 2001, Tom Maclay approached Tom Firebaugh at FWP about a conservation easement and was told it wasn't a priority. He read a letter from Mr. Maclay: "As a student in High School, I was thrilled one spring day in the mid-1970's to stalk within viewing range of a small group of elk on Section 16 of the northwest corner of the family ranch. This was the first time, other than by distant viewing, I had managed to get close enough to elk on the ranch, though I'd already hunted for a number of years. Occasionally I would find a lone track when I hunted south of McClain Creek, but generally, there was little evidence of elk. The Fish, Wildlife and Parks Department counted 15 to 40 head of elk in the area around the ranch in the mid-'80's, however, by the mid-to-late-'80's, elk fence materials were provided by Fish, Wildlife and Parks as elk were now regularly invading the haystack yards. This meant we now had an elk depredation problem not previously experienced in the history of the

ranch, 6 generations. Fish, Wildlife and Parks was now providing various elk control methods, balls of hair with the scent of humans, propane cannons, electric fences, kill permits, explosive devices, night herders and fencing material for 10 foot tall fences. Also in the late '80's, the ranch built three miles of fence to create a 12 pasture grazing system to successfully create an economical no-chemical knapweed control grazing system. This is interesting to note that the Natural Resources Conservation Service was amazed at the efficiency of this system and could not account for the exceptional weed control and increase in native range grasses such as Bluebunch Wheatgrass. However, by the late '80's, there were 180 head of elk in one field alone. We've also regularly had deer counts of 1 per acre on 65 acre fields. In an attempt to mitigate present and future detrimental effects of increased elk grazing on the ranch as well as provide future habitat, we transferred a grazing lease west of the State Section 16 for elk habitat on the south aspect slopes. Fish, Wildlife and Parks cumulative counts have shown this was the historical elk habitat." In the first picture he showed, it was a view looking across to the Sapphires. The Commissioners are aware of the war on weeds. When weeds are not controlled, there is significant erosion of topsoil and an inability of native grasses to come back. In this letter, the Maclays, who make their living from ranching and agriculture, are trying to control the infestation of knapweed and an increase in elk population. Topsoil cannot be replaced once it's gone. "As we headed into the early 1990's, pressure from our burgeoning elk herd was growing. They were increasingly eliminating cattle forage as well as any range land, weed control and water shed improvement benefits that had been incurred by our innovative livestock management practices. Indeed, the ranch was given the NRCS annual stewardship award for overall ranch management, highlighted by irrigation, range, weed and watershed management aspects. This commitment to finding solutions led to advisory roles in several projects. Tom was also pleased to assist the Rocky Mountain Elk Foundation in one of their first conservation easements. Nevertheless, the ranch continues to struggle with our commitment to balancing wildlife habitat and environmental stewardship with the economic realities of providing family income. In recent years we have endured losses of no less than 15 bushels per acre due to elk grazing and trampling, not to mention loss of grain quality over 500 acres. This results in an average annual loss of \$30,000. Needless to say, there are also significant annual losses for forage to the elk grazing in what has historically been a thin economic margin business. Alfalfa stands cannot be maintained because the fields are grazed going into winter, meaning that the plant root reserves are low, resulting in premature stand die-back, thus reversing any potential economic gain. Presently, we are cropping only half of the total 1,000 irrigated acres to minimize economic losses due to wildlife grazing. It is important to note that despite the large economic losses due to wildlife grazing, we have never charged anyone to hunt on the ranch and have allowed most hunters who have asked permission first. There has been a significant increase in hunters over the years, so many that we needed Fish, Wildlife and Parks to manage the hunters in order to allow fair chase and hunt for all." The Maclays, in their management and stewardship of the ranch, have been very responsible. The proposed subdivision and alternates presented are an extension of that responsibility.

Michelle Kuntz, 6676 Sun Valley Road, stated that everyone has done a good job in their presentations but everyone is so busy looking at the trees, they have forgotten to look at the forest. The larger issue is water. Wells in this area have poor performance. Mr. Kaufman has done a good job but the larger issue is how much can the hillside support before the wells below start drying up. That could lead to thousands of dollars in litigation. It happened about 12 years ago on King Road and Sun Valley Road and it could happen again. Having acreage without water is worthless. Water is a big issue in the area.

Cindy Bartling, 19955 Molly Lane, asked what the purpose was of the well with 360 gallons per minute?

Nick Kaufman stated the well was drilled for irrigation purposes. It provides irrigation for the lower fields and across the highway. The well will now be multiple use, it is the same well the fire trucks will use to fill their tanks.

Cindy Bartling stated that the developer has done a lot of work to try to make this an appropriate subdivision. One of her concerns is water. There are people in the area that are pumping water a quarter of a mile. Last year, the plan was for 70 wells, 70 one-acre lots. That many wells will dry up the aquifer. Property can't be sold without water. Fire is another concern, both structure fires and wildfires. Water systems in the homes will only work as long as there is power. If the power goes out, it doesn't matter if there is a water system or not. Access and the roads are also of concern. Sun Valley Road is in poor condition. Old Highway 93 is inadequate. According to the Lolo Plan, the area has been designated as Open and Resource. Her understanding is that there should be one home for every forty acres. They are proposing 5 homes on 28.31 acres. Where are the other 171+ acres that will be designated as part of this subdivision. Also, in the Lolo Plan, it mentions clustering. The original plan was not clustering but one of the alternates might accomplish that.

Ben S. Lane, 19701 King Road, stated he has 90 acres adjoining the south side of the proposed 28 acre parcel. The trailer Mr. Kaufman mentioned has to go across his land to get to its destination. It was a small travel trailer that was used in the summer by the owner of the land. It hasn't been there for at least three years and the electric meter has been removed. Mr. Kaufman led him to believe that the trailer had been there recently and that is not accurate. He hoped the rest of Mr. Kaufman's information was accurate, because it sounds good and he would be in favor of the project.

Kelly Shepherd, 6686 Sun Valley Road, stated he had two concerns. Mr. Maclay has been a good neighbor. The improvement to McClain Creek Road would affect his quality of life. It intersects Old Highway 93 at the apex of a hill and there is limited site distance. As traffic increases, it could lead to some safety concerns. His second issue is that the Maclay Ranch has effectively become an island for the elk. If this and future developments are approved, what will be the outcome on the elk, what alternative do they have.

John Vore stated the Maclay Ranch is an island between subdivisions on the north and south. This has been a favored elk winter range since 1965. Much of the current development did not exist in 1965. Elk are traditional in their use of areas and they don't use all areas the same. If there is development on the ranch, it would depend on the density of development. It does compromise the suitability of the area for elk and most likely would result in a lower carrying capacity, plus it would limit FWP's ability to manage the elk. If there is housing, their management tools, such as hunting, would be limited.

Donna Green stated that an explanation about the water issues had not yet been presented.

Chairman Evans stated that the Deputy County Attorney would speak to that issue.

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

Colleen Dowdall stated that the availability of water to the subdivision for domestic use is under the review provisions of a different statute. That responsibility lies with the local Health Department and the State Department of Environmental Quality. The Commissioners cannot consider the quantity or quality of water in approving or denying a subdivision. Those matters are reviewed by the Health Department. If this subdivision is approved by the Commissioners and the Health Department found that the availability of water was not adequate or would adversely affect others, they could deny the subdivision. It requires both approvals. A public comment mentioned that the Lolo Comprehensive Plan designates this as Open and Resource land with a density of one dwelling per forty acres; one house on 40 acres. The one per forty designation does not necessarily mean 40 acre parcels. That is often not the best development pattern for wildlife, transportation, other services, etc. It is the density over the entire parcel that is of concern. The Lolo Plan also contemplates, in the Open and Resource designation, clustering that doesn't necessarily look like clustering in an urban area, but does cluster larger lots closer to roads.

Cindy Bartling stated that her questions was where are the other 171 acres that go along with this development going to be designated. Are there 171 other acres that have been designated with this development.

Nick Kaufman stated there are 3,500 acres in the Maclay Ranch. Proposed Alternate #2 clusters 5 homes on 10 acres. He felt that 5 homesites on 10 acres out of the entire 3,500 acres met the definition of clustering. There are 5 lots created by a boundary location, 5 lots down by Highway 93, the 5 lots of Maple Creek, plus these additional 4 lots, which abut other homes. From 1977 to 2000, vehicle trips on Sun Valley Road and Carlton Creek Road have jumped from 77 to 417, none as a result of development on the Maclay Ranch. He felt they were clustering homes close to existing roads and other existing development.

Commissioner Curtiss stated that the concern might be that there are not 171 additional acres set aside that will not be developed in the future.

Nick Kaufman stated that putting a home on one acre and setting 39 acres aside is not the clustering concept anticipated in the Lolo Plan. That scatters houses throughout the area. This proposal concentrates housing in a portion of the ranch that is less important elk habitat and adjacent to roads and other existing homes. If the Commissioners feel that additional land needs to be set aside, there is a location on the ranch where that can be done. He hoped this would receive some credit for clustering.

Commissioner Carey stated that his preference would be Alternate #3. It has the least impact on wildlife habitat and makes the best use of existing infrastructure. It is frustrating that cumulative impact or water issues cannot be considered. The developer has made a good effort to respond to objections and he would support Alternate #3.

Commissioner Curtiss stated that the recommendation from staff and the Planning Board is for denial, so findings have not been made to support their decision. If the Board goes forward with Alternate #3 because it mitigates some of the expressed concerns, findings will be made to support their decision.

Colleen Dowdall stated the Board could make general findings and conclusions of law today, that the original proposal did not comply with the regulations, but the alternate proposed mitigates concerns and complies with the regulations. Staff can put together findings based on testimony and correspondence and agency comment.

Monte Sipe stated that it is important to understand that the alternatives are conceptual. It is unknown if some areas will be designated as no build zones and where building envelopes will be located. To craft conditions, it is important to have other agencies review the alternative. Currently, there are no conditions because staff had recommended denial.

Colleen Dowdall stated her first concern was if an alternative was chosen, to make sure it complied with all the regulations or required variances. She concluded that if one of the options is approved, it will have to comply with the regulations as they exist, because no variances have been requested. A condition of approval would require that the developer bring a final design to the Board of County Commissioners for approval prior to filing the final plat.

Commissioner Curtiss stated that there were variances requested with the original design that were not addressed because it was being recommended for denial. They all refer to off-site roads.

Monte Sipe stated the majority of the variances were for off-site roads, there were a few for road width. There was a request to vary from certain standards in the original application packet.

Colleen Dowdall stated that if the Board does not go through the variance procedure and just approved the subdivision, she would recommend a condition that the developer bring in a final design prior to final plat that is consistent with whatever alternate chosen. The Board may chose to go through the variances.

Chairman Evans stated that wildlife is a major reason why people like to live in Montana. Years ago when the Maloney Ranch wanted to subdivide, land sensitive zoning was instituted, which provided the ability for people who owned the land to develop and still set aside specific areas where wildlife and the habitat would be protected. Development was able to be done on the Maloney Ranch while saving sensitive land. There isn't a person in this room that hasn't had some cumulative effect on the valley. To tell Mr. Maclay he can't have 5 lots on his 3,500 acre ranch because it might affect someone else's view is not fair. She would support this proposal because she feels it meets the requirements and they have worked hard to see to it that the public has been heard. These 5 houses will not keep the elk and deer from using the land. She lives on Whitaker Drive adjacent to the golf course and has had up to 13 deer in her yard at one time.

Nick Kaufman stated that in the original application request, the applicant requested a variance from Section 3-2(I) of the Missoula County Subdivision Regulations requiring a roadway width minimum of 24 feet for Maple Creek Road. The existing portion of the road is 20 feet and they are proposing the extension at 20 feet as well. He went over the criteria for granting this variance. He also went over other variance requests, allowing Maple Creek and Lamar Trail South to have grades in excess of 8%, allowing Maple Creek Road and Lamar Trail South to exceed the maximum cul-de-sac length,



allowing the Sun Valley Road right-of-way to be less than 60 feet, allowing the Sun Valley Road pavement width to be less than 24 feet and allowing Sun Valley Road to have grades in excess of 8%.

Colleen Dowdall stated that in the original review, the Public Works Department supported all the variance requests.

Commissioner Carey stated that if there is support from the Board for Alternate #3, he would like to take another week to draw up conditions, variances and findings of fact.

Chairman Evans stated that she would support Alternate #3.

Commissioner Curtiss stated that she would also support Alternate #3.

Commissioner Carey moved that the Board of County Commissioners support, in principal, Alternate #3 of the Carlton Heights-Maple Creek Addition No. 2 as presented by the developer's representative at today's meeting and at the next Public Meeting on Wednesday, March 24, 2004, review Variances, Conditions of Approval, Findings of Fact and Conclusions of Law. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### Other Business

Nick Kaufman: This is related to an issue totally different than anything you've discussed today, but I think it needs to be aired. I was peacefully sitting in my office contemplating what to do next on my somewhat slim agenda of items that I have to do, and I got a call from Commissioner Evans. She said that the Mayor had been over and that there were three subdivisions in the County that were looking for annexation because of policies that were being enforced by the Public Works Director. I engaged in an emotional state when I heard that to the point that I had to call Commissioner Evans back and apologize to her because my anger wasn't directed at her. And here's what I want to be sure the County Commission and the Public Works Director understand. Developers, when they have a choice of taking subdivisions through in the County or the City, quite often choose to take a development through in the City. If you watched what happened with the Briggs Street project, which our firm represented, you can understand perhaps the difference between the two governing bodies. I don't want anybody to take that as a criticism of the City Council. Every person on that City Council is representing, is fulfilling their responsibility and obligation as a Councilman, to the best of their ability and they did something that I didn't do, they ran for office and they got elected, and I will not criticize them nor will I ever criticize this body. When we work with the Public Works Director, be it in the City or County, there often times are some disagreements. And in this case, the interesting issue is whether or not to put public sewer and water under the street right-of-way. And if a person is in the engineering or development business hears that, they're going to go, "what, why in the world would anybody do that." Well, the Public Works Director didn't do that. In 1984, by Resolution 84-049, the Missoula County Commissioners at that time, Commissioner Evans, you'd be a guilty party, the other two would be innocent, adopted a resolution saying that we can't do that and this Public Works Director, Greg Robertson, enforced that, which raised a lot of eyebrows and a lot of concern. In representing developers who are doing traditional neighborhood design where that infrastructure has to go into the right-of-way, it creates a dilemma. That dilemma is we didn't have a letter from the Water Department or a letter from City sewer saying, yeah, if our utilities underneath a public road fail or cause destruction or disservice to the road, we'll come and fix it. Nobody stepped up to the plate to take that responsibility, nobody did. Over the recent period of months, actually, most recently in the last three weeks, Greg Robertson had worked with Mountain Water Company to get a letter from Jerry Lukasik and had been working with Bruce Bender, who is the Public Works Director in the City. Along comes WGM Group and a project called Windsor Park and we just facilitated the receipt of those letters in working with the City and Mountain Water Company and Mr. Robertson. Now that the entities who own the utilities are accepting responsibility for those trenches, we can go ahead and do our design. Any statements relative to Mr. Robertson I think need to be couched in the context of a person who is doing his job just as I do my job. With Colleen Dowdall here, she will testify that when I'm working with someone who I have difficulty with, I may whine to her first but I generally always go back to the person I have difficulty with and solve the issue. That my working with Mr. Robertson through his tenure, I have been in front of his desk a number of times and we have always worked through our issues and I think he is very responsible to the citizens of Missoula County while I may not disagree with him from time to time, when I take the responsibility to listen to what he has to say and I look at the outcome in this case which makes the utility companies responsible for whatever their damage may be, he made the right decision. Did I like it when he first made it? No, because he put a lot of extra work on my plate and if that doesn't clarify the situation, I'd be happy to answer any questions either Greg or the Commissioners have.

There being no further business to come before the Board, the Commissioners were in recess at 4:05 p.m.

#### THURSDAY, MARCH 18, 2004

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:

Letter – The Commissioners approved and signed a letter, dated March 18, 2004, to the Upper Linda Vista Homeowners Association supporting the homeowners' efforts to reduce the cost of maintenance by providing an alternative source of water for Rainbow and Kelsey Parks. Missoula County has authorized the construction of wells to serve these parks and supports the homeowners' application for water rights to these wells.

Letters – The Commissioners signed identical letters, dated March 19, 2004, congratulating four young men on their significant achievement of earning Eagle Scout Awards in the Boy Scouts of America. Letters were sent to: 1) Duncan Harp; 2) Thomas Hawkins; 3) Shay McCarthy; and 4) Chris Schantz. A multiple Eagle Scout Court of Honor will be held on Friday, March 26, 2004, at which time the Commissioners' letters will be read.

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Other items included:

- 1) A briefing was given on the Commissioners' meeting with the Missoula Development Authority to be held on March 22<sup>nd</sup>.

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

**FRIDAY, MARCH 19, 2004**

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, Commissioner Carey attended a Mental Health Board Meeting at Fort Missoula.

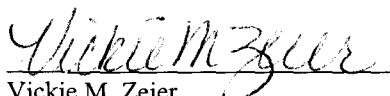
Claims List – Commissioners Carey and Curtiss signed the Claims List, dated March 17, 2004, with a grand total of \$6,201.81. The Claims List was returned to the Accounting Department.


Claims Lists – Commissioners Carey and Curtiss signed four (4) Claims Lists, dated March 18, 2004, with the following grand totals:

- 1) \$219.72;
- 2) \$2,242.16;
- 3) \$48,905.84; and
- 4) \$40,209.14.

The Claims Lists were returned to the Accounting Department.

Plat and Agreement – The Commissioners signed the Plat and Subdivision Improvements Agreement and Guarantee for Kelly Island Estates, a residential subdivision located in the SW¼ of Section 14, T 13 N, R 20 W, PMM, Missoula County, a total area of 10.86 acres, with the owners/developers being Mostad Construction, Inc. The Improvements Agreement is for a sidewalk/walkway construction along Kelly Island Court and along the east side of Douglas Drive; complete pavement and install stop and street sign at intersection of Kelly Island Court and Council Way; conduct final inspection of the fire suppression system; and engineering staking and construction inspection thereof. Said improvements shall be completed no later than July 1, 2004. The estimated costs are \$22,506.25, and have been secured by a letter of credit issued by First Security Bank.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, MARCH 22, 2004**

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, the Commissioners went to the Art Museum to view artwork collections.

Claims List – The Commissioners signed the Claims List, dated March 18, 2004, with a grand total of \$67,213.59. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 19, 2004, with a grand total of \$306.60. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 22, 2004, with a grand total of \$450,479.36. The Claims List was returned to the Accounting Department.

Plat and Agreements – The Commissioners signed the Plat, Agreement and Guarantee, and Subdivision Improvements Agreement and Guarantee for Maloney Ranch, Phase VIII, a subdivision located in the SE¼ of Section 10, the W½ of Section 11, and all of Section 14, T 12 N, R 20 W, PMM, Missoula County, a total area of 205.66 acres, with the owner of record being Maloney Properties, LLC. The Agreement and Guarantee states that plat approval for Maloney Ranch, Phases V, VI, VII and VIII require the developer to contribute \$1,800 per lot (123 total lots) to the Miller Creek Transportation Mitigation Fund ("MCTMF"). The MCTMF Fee has been secured by a Performance Bond issued by Lexon Insurance Company in the amount of \$221,400.00. The Improvements Agreement is for improvements as described in the Cost Estimate, attached as Exhibit "A"; said improvements shall be completed no later than two years after plat filing. The estimated costs are \$1,397,025.00, and have been secured by a Performance Bond issued by Lexon Insurance Company.

Plat and Agreement – The Commissioners signed the Plat and Subdivision Improvements Agreement and Guarantee for Phantom Hills, Phase 3, a subdivision located in the SW¼ of Section 10, T 13 N, R 20 W, PMM, Missoula County, a total area of 4.75 acres, with the owners of record being Charles M. and Nancy A. Deschamps. The Improvements Agreement is for the construction of sewer main and services, water main and services, streets, sidewalks, storm drains and other miscellaneous improvements; said improvements shall be completed no later than February 18, 2005. The estimated costs are \$245,988.59, and have been secured by an Irrevocable Letter of Credit from First Security Bank.

Plat and Agreement – The Commissioners signed the Plat and Development Agreement for Ondrak Addition, a subdivision located in the NW¼ of Section 17, T 13 N, R 20 W, PMM, Missoula County, a total area of 10.30 acres, with the owners of record being Shelter West, Inc. and Mark J. and Becky J. Kobos. The Development Agreement, dated March 2, 2004 relates to shared driveway maintenance, residential fire sprinklers, weed control, address signs, and radon potential issues.



## TUESDAY, MARCH 23, 2004

The Board of County Commissioners did not meet in regular session. Commissioner Curtiss was out of the office all day due to her husband having surgery; Commissioner Evans was out all day due to illness.

## WEDNESDAY, MARCH 24, 2004

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

Claims Lists – Commissioners Carey and Evans signed three (3) Claims Lists, dated March 23, 2004, with the following grand totals:

- 1) \$366.68;
- 2) \$11,458.51; and
- 3) \$99,961.63.

The Claims Lists were returned to the Accounting Department.

Plat and Agreement – The Commissioners signed the Plat and Subdivision Improvements Agreement and Guarantee for Hillcrest Heights, Phase II, a 15-lot subdivision located in the NE¼ of Section 2, T 16 N, R 15 W, PMM, Missoula County, a total area of 21.40 acres, with the owners/developers being Smith/Hauser Investments. The Improvements Agreement is for the paving of Lemar Drive; said improvements shall be completed no later than June 12, 2004. The estimated costs are \$80,312.50, and have been secured by a Letter of Credit from First Valley Bank of Seeley Lake.

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Safeway, Inc., San Francisco CA, as applicant for Accounting Warrant #29210, issued September 26, 2003 on the Missoula County General Fund in the amount of \$17.98 (for wine), which was not received in the mail. No bond of indemnity is required.

ADMINISTRATIVE MEETING

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

Letters – The Commissioners signed letters to Montana's Congressional Delegation (Baucus, Burns, Rehberg), dated March 22, 2004, reiterating the Commissioners' backing and thanking the delegation for their support of the Blackfoot Community Project and the effort to conserve approximately 88,000 acres of Plum Creek Timber Company lands in the Blackfoot Watershed.

Amendment – The Commissioners signed an Amendment, dated February 5, 2004, to the Memorandum of Agreement between Missoula County and Western Montana Addiction Services – Turning Point (dated October 1, 2003) for the provision of the All Star Program and Flagship services at four District One Middle Schools. This Amendment reduces the total value of the agreement from \$46,056.64 to \$39,662.00. The Agreement will terminate on September 30, 2004.

Addendum – The Commissioners signed an Addendum, dated March 24, 2004 to the Professional Services Contract between Missoula County and Lisa Frost of LKF Data Entry Services, dated March 19, 2003, for the re-keying for verification purposes from legal documents recorded or filed in the Missoula County Clerk & Recorder's Office. The Addendum extends the contract from March 19, 2004 through March 19, 2005, and states that the contract can be renewed on a year-to-year basis for a period not to exceed two more years.

Agreement – The Commissioners signed one (1) Sanitary Sewer Grant Program Agreement for Partial Assistance to Owner-Occupied Households Secured by Real Property, dated February 21, 2004, with Richard L. and Ruth A. Johnson, 836 Dakota Avenue, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. All sewer development fees and on-site connection costs and fees are as set forth therein.

Agreement – The Commissioners signed a Memorandum of Agreement between Missoula County and Mountain Home Montana for the provision of basic needs assistance to young women aged 14-19 who are pregnant or parenting. The total amount shall not exceed \$10,000. The term will be March 15, 2004 through February, 2005. All other terms and conditions are set forth therein.

Resolution No. 2004-040 – The Commissioners signed Resolution No. 2004-040, dated March 24, 2004, a Resolution providing for submission to the people the question of establishing a Local Government Review and Study Commission. The purpose of the Study Commission is to study the existing form and powers of a local government and procedures for delivery of local government services and compare them with other forms available under the laws of the State of Montana. Montana Constitution and Law require this question be placed before the voters every ten years.

Agreement – Chairman Evans signed a Memorandum of Agreement, dated November 26, 2003, between the Missoula County Park Board (the "Board") and the East Missoula Lion's Club for assistance with park development. The Board agrees to provide up to \$2,000 in matching funds from the Capital Matching Fund Program (Fall FY04), and must be spent by November 25, 2005. The document was returned to Lisa Moisey, County Parks Coordinator, for further handling.

Other items included:

- 1) The Commissioners approved staff recommendations for the CBO (Community Based Organizations) Review Team. The document was returned to Jean Harte in the Office of Planning and Grants.
- 2) The Commissioners approved the use of Coop Housing Funds so that Commissioner Carey can attend the 4<sup>th</sup> Annual Senior Cooperative Housing Conference to be held May 6 & 7, 2004 in Bloomington, Minnesota. The registration fee for the conference is \$150.00; hotel special rates are \$82 per night.
- 3) A discussion was held with Greg Robertson, Director of Public Works, and the Commissioners approved a motion to schedule a hearing regarding setting fees for the Department of Public Works.

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

#### **PUBLIC MEETING – March 24, 2004**

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Bill Carey, County Public Works Director Greg Robertson and County Engineer Joe Jedrykowski. Commissioner Jean Curtiss had a family illness.

#### **Pledge of Allegiance**

#### **Conditions of Approval, Variances and Findings of Fact – Alternate #3 – Carlton Heights-Maple Creek Addition #2 (5 lots on 28.31 acres) – west of U.S. Highway 93, south of Carlton (From March 17, 2004)** **POSTPONED TO APRIL 14, 2004**

Chairman Evans announced that the discussion on the Carlton Heights-Maple Creek Addition #2 Subdivision had been postponed to April 14, 2004.

#### **Public Comment**

None

#### **Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$727,565.04. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

#### **Hearing: Intent to Create RSID No. 8844 – Maintenance of one fire hydrant located at Fort Courage Childcare Center**

Greg Robertson presented the staff report.

A Resolution of Intent to Create RSID #8844 for a fire hydrant maintenance district to serve the property known as Fort Courage Childcare Center was adopted on February 17, 2004. This was a condition of their zoning request. The petition requesting the installation of one hydrant was initiated by the owners of the properties within the District and supported 100%. Mountain Water Company will install the hydrant. The Missoula Rural Fire District has reviewed the request and has approved the location. The estimated cost of maintaining one hydrant is \$387.70 per year, including all costs. There is one lot in the district. The Public Works Department recommends creation of RSID #8844.

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

Commissioner Carey moved that the Board of County Commissioners accept the recommendation of the Public Works Department and adopt a Resolution to Create RSID #8844 for a fire hydrant maintenance district to serve the property known as Fort Courage Childcare Center. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

#### **Hearing: Policy for Dust Palliatives**

Joe Jedrykowski, County Engineer, stated the County currently has a policy which allows the use of several varieties of dust palliatives for roads, such as Calcium Chloride, Mag(nesium) Chloride, and the use of some products containing emulsified asphalts or oils under a variety of different product names. The County is finding that the asphalt or oil products create a very hard surface road that can't be cut even by a carbide-tipped road grader blade. Once these roads start to deteriorate, they develop large potholes and it is impossible to keep any product in those potholes to provide a smooth surface. Gravel, asphalt, etc., will not stay in the pothole. The only alternative to provide maintenance to those roads is to grade them up. The grading process is very time consuming and uses the heavy equipment for long periods of time. The recommendation of the Public Works Department, which does not have to be decided today, is to discontinue permission for dust abaters to use products containing emulsified asphalts or oils and limit usage to Calcium Chloride and Mag Chloride and consider other products not containing asphalt or oil. He spoke with Mr. Lyman of Lyman Dust Control about the products he used and the possibility of setting up some test strips on a road with several different palliatives. That still doesn't remove the fact that there are a lot of roads that are rock hard and deteriorating. A lot of time and equipment hours will be spent trying to bring those roads back to a smooth surface. He is reluctant to allow the use of any products containing asphalts or oils, even if those test strips are done.

Chairman Evans stated that she had a phone call from a lady on Nine Mile who had used a product called Envi-Rox which seems like a good product.

Chairman Evans opened the public hearing.

Jon Harvala, Missoula City-County Health Department, Water Quality District, stated that he was commenting in favor of the proposed changes to the Dust Palliative Policy. The oil based alternatives, particularly road oil, known as Diesel Fuel #4, contains constituents that have a potential impact to the environment or human health; benzenes, methylbenzenes, PAH, etc. They have studied the issue, along with the Road Department, and looked at the environmental effects of some of these products. Mag Chloride and Calcium Chloride have the least amount of environmental effects. There is some concern about applying Lignisulfonate near surface waters, although it is a wood based product. It has a high BOD which could impact trout populations and aquatic life. If a road oil is over-applied and gets into State waters and leaves any sheen, it is violation of the State Water Quality Act. Applicators need to be aware of this requirement.

Jerry Lyman, Lyman Dust Control, stated he brought some articles on Mag Chloride and its potential health hazards, versus other products that are more environmentally safe, like Envi-Rox 2000. Envi-Rox 2000 is a wood based product made from the pitch of the Ponderosa pine tree. None of his customers like Mag Chloride, it doesn't keep the dust down very well. Applicators need some alternatives. That is why he suggested doing a test strip with the Envi-Rox 2000 versus Mag Chloride. Magnesium Chloride is very corrosive. Envi-Rox 2000 is made from emulsified tree pitch mixed with water. When it penetrates in the ground and the water dries out, it glues the ground together and keeps the dust down. It doesn't leech into the ground because it is not water soluble after it dries. It is all natural and has no health hazards. It breaks up better than oils do. Anything that is applied to control dust is going to make a road hard to some extent. He has been applying dust palliatives in the County for a long time and the roads have always been able to be maintained, no matter what was used. The County should not need to do anything to a road for the rest of the summer once dust control has been applied.

Commissioner Carey asked if the City uses Mag Chloride to de-ice streets.

Greg Robertson stated that the City and the County use Magnesium Chloride with corrosion inhibitors in the winter.

Joe Jedrykowski stated that the Road Department took a video of Guest Ranch Road north of Seeley Lake, which is about a mile long. That road was treated year before last with CDS-1000.

Jerry Lyman stated that he was not sure what CDS-1000 was.

Joe Jedrykowski stated that a report from NCA Labs said they tested it for Lyman Dust Control and according to department records, it was applied by Lyman Dust Control. The description is listed as LD-CDS-1000.

Jerry Lyman stated that was not done last year.

Joe Jedrykowski stated it had been done for several years. The road was re-graveled in 2000 and the substance had been applied 3 times since then, in 2000, 2001 and 2002, or possibly every year since then. Last year the department prepped the road with graders and that was when it was discovered it was impossible to maintain. The carbide-tipped road grader blade would not break up the road. They were looking at tearing the whole road up. Last year, the grader blade was used to collect as much gravel as possible from the road shoulders and brought it back across the surface, then dust abatement was applied to that surface.

Jerry Lyman stated that he believed CDS-1000 was an asphalt based product.

Joe Jedrykowski stated they made a video of the road this spring that shows the extent of the deterioration and difficulty in maintaining it. They will leave the video with the Commissioners for later viewing. Normally, it would take a couple of hours with a road blade, half a day at most, to move the gravel back and forth to return it to a crown surface and make it ready for dust abatement. He estimated it could take a week on that road, first tearing it up, then trying to break the materials down into smaller pieces, then get it ready for dust abatement. His concern is that Mag Chloride or Calcium Chloride may not be able to be used because the aggregate is contaminated with another product that will not allow adhesion of Mag Chloride and dust control will not be effective. That will create an added cost of bringing in about 4 inches of new gravel and re-gravel the road to allow a usable dust abatement product. He has a publication distributed by the Local Technical Assistance Program (LTAP), located at Montana State University in Bozeman, which assists all Montana counties with engineering and technical problems. The book, entitled "Gravel Roads - Back to the Basics," is to help County Road Departments maintain roads most efficiently and effectively. The book discusses some testing conducting in Colorado on a number of roads. The only products tested were Lignisulfonate, Calcium Chloride and Mag Chloride, the most effective of which was Magnesium Chloride. The book talks about the effectiveness of dust control and surface loss. His interpretation of the publication is that Magnesium Chloride is an effective dust control agent. The product is salt based and the book discusses concerns of loss of this material in water. It is not considered a factor because salts exist in the environment already and the dilution factor of large bodies of water and streams is significant enough so that the salt does not deteriorate water quality, not like heavy metals or other chemicals.

Jerry Lyman stated that Magnesium Chloride has a lot of heavy metals in it. Colorado has banned Magnesium Chloride on a lot of their streets because of lead and arsenic.

Joe Jedrykowski stated that the book did not mention that fact. The book was published in 2000.

Jerry Lyman stated that if a road has had any other product than Mag Chloride on it, it will not accept Mag Chloride after that, it is repelled. Nothing should go into the water. Anything that is water soluble will eventually wash off. The only alternative is a tree based product that doesn't leach into the environment that will still keep dust down. Anything else will leach into the ground water.

Chairman Evans asked Mr. Lyman what product he would use.

Jerry Lyman stated that he would use Envi-Rox 2000 because it is all natural and the most environmentally safe product. Cost-wise, it is about the same. He has been in this business for 30 years. People that live on dirt roads are willing to pay to have dust control applied. They need to keep the dust down cost effectively. He has never done a job in Missoula County with Magnesium Chloride that the client has been happy with. It doesn't last very long and when the roads get

muddy, the salt get up underneath cars and causes rust. Magnesium Chloride for dust control is more corrosive than Mag Chloride for ice control.

Chairman Evans asked if Envi-Rox bonds with whatever has been applied to the road before.

Jerry Lyman stated that it will go over Magnesium Chloride. If there have been any petroleum products on the road, Magnesium Chloride cannot penetrate it. It beads up and runs off. The only way to solve the situation is to re-gravel roads that have had any other kind of dust palliative, then use Mag Chloride.

Chairman Evans asked if a road has had an oil based product applied before, will Envi-Rox bond.

Jerry Lyman stated that was correct.

Greg Robertson stated that according to the information provided about Envi-Rox, the proposed amendment would not impact its use. It is an interesting product.

Joe Jedrykowski stated the Resolution is worded to allow Magnesium Chloride and Calcium Chloride and would consider other products that are not petroleum and/or oil based. There might still be a concern with Envi-Rox near live water about BOD. It may not be a pulp derivative like Lignisulfonate, but it would still have a biological oxygen demand. That might be its biggest drawback in some areas if a road is close enough to live water.

Jerry Lyman stated that nothing should go into live water. Envi-Rox could get into the water at the time of application, but not after it has been applied, it doesn't leach and, once dry, it is not water soluble. The chlorides in Mag Chloride are leaching all the time and can cause vegetation kill from the salt. That is the big problem they are having in Colorado, it is killing so many trees.

Joe Jedrykowski asked if the problem was in urban areas or suburbs with vegetation close to the road.

Jerry Lyman stated that it was anywhere there is vegetation.

Commissioner Carey asked how long Mr. Lyman has been using Envi-Rox.

Jerry Lyman stated he had been using Envi-Rox for about 5 years.

Joe Jedrykowski stated that permits could be compared with products applied to see the results.

Jerry Lyman stated that he has not been using it in Missoula County for that long.

Greg Robertson stated that he thought it was used for the first time last year.

Jerry Lyman stated that was correct, but they have been using the product in other counties. Most of the product used in Missoula County last year was an asphalt emulsion. They are trying to get away from all chlorides and all petroleum products and use all natural products.

Joe Jedrykowski stated the advice in LTAP is to avoid using the oil or emulsified based products and use chlorides. The publication is from Colorado but is in regards to County roads, not developed city streets and residential areas. The report refers primarily to chlorides. Other counties in Montana have also experienced maintenance problems with oil based products and have banned their use.

Jerry Lyman stated that oil based products have been banned in Bozeman, but that was the only one he knew of. The ban is because of a maintenance issue, which shouldn't be a problem with Envi-Rox or Mag Chloride.

Joe Jedrykowski stated that citizens want the most effective products for their money and he can understand that. However, when the road starts to deteriorate and develop numerous potholes, then the County has a duty to provide a smooth gravel surface that is hazard free. There is a difference between a little corrosion and a broken wheel rim, broken tie rods or a possible accident.

Jerry Lyman stated that no matter what product is used, or even if nothing is used, the road will still need maintenance at some time.

Joe Jedrykowski stated that is the point, they can maintain a road that has had an application of Calcium Chloride, but roads that have emulsions and oils are a real problem. As Greg said, the department would be willing to look at products like Envi-Rox. The department will have to put the effort in on those roads where oil based products have been used and allow the use of Envi-Rox after they are repaired.

Jerry Lyman stated that if citizens are told they can only use Magnesium Chloride and not given options, he won't be in business very long, because people won't buy it, it is not cost effective. Something that works has to be used to keep customers happy. As he said earlier, he has been in this business for 30 years and nobody has said anything about a maintenance issue before.

Mike Mahoney stated he was the Assistant Road Supervisor in Seeley Lake. He has a lot of first hand experience with oil based products being applied. As Joe said, Guest Ranch Road is a real problem. Any compromised spots in the road create a chuckhole, not just a little round, easy-edged hole, it is a hole with a very sharp, very abrupt edge that gets bigger and bigger. There is no way to repair these holes. If gravel is used, the first time it rains, the gravel is gone. If UPM (cold mix asphalt) is used, there is a chance that everything around the hole will be gone, creating an island in the middle of a crater. Guest Ranch Road has had several applications and it has set up just like slate marble. The equipment used to maintain this road is marginal. The surface of the road may have to be removed and disposed of, which may have an

environmental impact. When people apply for a dust control permit, he asks them to request Mag Chloride because of the maintenance issues. Guest Ranch Road is not maintainable currently and the road has to be replaced.

Travis Ross, City-County Health Department, Environmental Health and Water Quality, stated that testing has been done with Mag Chloride and Calcium Chloride. They are used for ice control in the winter so they have been screened heavily. It has been determined they are fairly safe products. The Health Department supports the amendments to the Dust Palliative Policy. The Envi-Rox product has not been looked at, but it is a bio-degradable product. It is an easy choice between #4 Diesel and Mag Chloride from an environmental standpoint. In Montana, Risk Based Screening Levels (RBSL) are used to determine the extent of cleanup for soils. In a lot of cases, the road oils cause contamination of the soil to such an extent that the RBSL cannot be met.

Steve Warmoth, We Dust Control and De-Icing, stated that he uses Magnesium Chloride almost exclusively and has had very good results with it, it is durable. He does a lot of work in Missoula and Ravalli County. Mag Chloride has been around for a long time and has a good track record. He also uses a comparable material to Envi-Rox 2000 called Enviroad Earthbind, which can be used over emulsion or oil mixtures. They also use Lignisulfonate. However, the product of choice for him and his customers is Magnesium Chloride.

Mark Melotz, Melotz Trucking, stated he does a lot of dust control in the County and all over the state with Magnesium Chloride. He can name several roads that he has done with Mag Chloride if the Road Department would like to have a look at them. He would like to be involved with this process.

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

Chairman Evans stated that she is a fan of paving and asphalt is okay to put down. However, if it is torn up, it becomes a hazardous material. She can understand why using oil emulsions is not a good idea, especially environmental. Mag Chloride and Calcium Chloride are good products. She would like the Road Department to look at Envi-Rox 2000 and Enviroad Earthbind. She would like to see the last part of the last sentence ("and will be dealt with accordingly") under #2 in the Resolution deleted.

Commissioner Carey asked if other products besides Mag Chloride and Calcium Chloride should be listed.

Greg Robertson stated that the Road Department is open to looking at new products as long as they are not asphalt or oil based. After reading the Envi-Rox 2000 brochure, he is interested in trying the product. From a water quality standpoint, it is an improvement over oil based products. He and Mr. Lyman both agree that asphalt based products are not too good and his company is trying to get away from them. There is no reason for the department to not entertain the prospect of using this product, especially if it is comparable in cost.

Commissioner Carey asked if the last sentence would need to be modified based on his statement.

Greg Robertson stated that the entire sentence could be deleted.

Commissioner Carey moved that the Board of County Commissioners adopt the Dust Palliative Policy, with the amendment to delete the last sentence from #2. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

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

#### THURSDAY, MARCH 25, 2004

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

Claims Lists – Commissioners Carey and Curtiss signed two (2) Claims Lists, dated March 25, 2004, with the following grand totals:

- 1) \$15,025.30; and
- 2) \$18,074.03.

The Claims Lists were returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

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

Amendment – Per recommendation of the Benefits Advisory Committee, the Commissioners approved and signed Amendment 8.06 to the Missoula County Employee Benefits Plan, which becomes effective July 1, 2004. The amendment sets forth therein a combination of benefit reductions, premium increases and administrative changes.

Request for Action – Per recommendation of the Missoula Development Authority ("MDA"), Commissioners Curtiss and Carey approved (with Commissioner Evans opposing) an amendment to the price list for certain lots (listed therein) in the Missoula Development Park. The MDA recommended that the lots be de-emphasized for not more than 90 days so that the MDA can review Dick King's report and discuss future planning opportunities regarding the premium lots that remain. Offers can be presented and accepted on this land while listed as "See Listing Agent". The document was returned to Barb Martens in the Projects Office for further handling.

Extension Request – The Commissioners approved and signed a letter, dated March 25, 2004 to Ron Ewart, Eli & Associates, approving his request for a one-year extension of the final plat approval deadline for the Sheep Ranch Inn RV Park. The new deadline will be March 28, 2005.

Resolution No. 2004-041 – The Commissioners signed Resolution No. 2004-041 (“Dust Palliative Policy”), dated March 25, 2004, stating that any person desiring to apply dust treatment, or any other manner of surface coating, within a public right-of-way of any road or street subject to the County’s control shall first obtain a permit from the Missoula County Department of Public Works. The permits are subject to certain conditions, as set forth therein. This Resolution supercedes Resolution 2003-029.

Contract – Commissioner Curtiss signed a Grant (No. 2004-005) Contract between The Montana Lewis and Clark Bicentennial Commission (“Grantor”), Helena, and the Western Montana Lewis & Clark Bicentennial Commission (“Grantee”), Missoula, for the design and installation of interpretive signage at Caras Park in Missoula. The total amount shall not exceed \$6,000. All other terms and conditions are set forth therein.

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

**FRIDAY, MARCH 26, 2004**

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

Claims List – The Commissioners signed the Claims List, dated March 24, 2004, with a grand total of \$24,582.88. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated March 25, 2004, with the following grand totals:

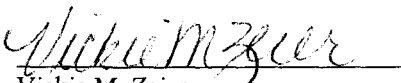
- 1) \$8,931.49; and
- 2) \$4,685.17.

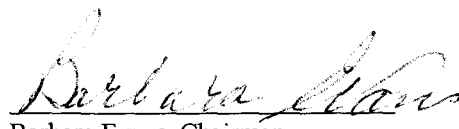
The Claims Lists were returned to the Accounting Department.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Commercial Energy of Montana, Cutbank, as Principal for Missoula County Public Schools Warrant #104200, issued March 11, 2004 on the Missoula County General Fund in the amount of \$25,182.23 (for natural gas), which cannot be found.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Shane McCorkle, Missoula, as Principal for Missoula County Public Schools Warrant #137238, issued March 19, 2004 on the Missoula County MCPS Payroll Fund in the amount of \$25.74 (for wages), which cannot be found.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 06 – CY2004 - Pay Date: March 19, 2004. Total Missoula County Payroll: \$897,144.09. The Transmittal Sheet was returned to the Auditor’s Office.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, MARCH 29, 2004**

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

Claims List – The Commissioners signed the Claims List, dated March 25, 2004, with a grand total of \$18,949.85. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed three (3) Claims Lists, dated March 26, 2004, with the following grand totals:

- 1) \$27,109.89;
- 2) \$200.00; and
- 3) \$1,792.89.

The Claims Lists were returned to the Accounting Department.

Claims Lists – The Commissioners signed three (3) Claims Lists, dated March 29, 2004, with the following grand totals:

- 1) \$11,376.07;
- 2) \$22,722.70; and
- 3) \$2,283.25.

The Claims Lists were returned to the Accounting Department.

Plat – The Commissioners signed the Plat for Cunningham Homes, a residential subdivision located in the NW¼ of Section 26, T 11 N, R 20 W, PMM, Missoula County, a total area of 45.22 acres, with the owners/developer of record being the Frank Cunningham Family Trust, the Lorraine M. Cunningham Family Trust, and Delane R. Cunningham. the Frank Cunningham Family Trust, the Lorraine M. Cunningham Family Trust, and Delane R. Cunningham.

**ADMINISTRATIVE MEETING**

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

Letter – The Commissioners approved and signed a letter, dated March 29, 2004, to Sam Bolton, Chair, and Members of the Seeley Lake Community Council, informing them that the Housing Study they inquired about was

commissioned by the Missoula Housing Authority. Because of limited funding, it is doubtful that the Housing Authority could include Seeley Lake in their project. The Commissioners also stated that they have been unable, unfortunately, to secure any additional funding for the Community Council for this fiscal year.

Letters – The Commissioners signed letters to Montana's Congressional Delegation (Baucus, Burns, Rehberg), dated March 24, 2004, stating the Commissioners' support for the University of Montana/College of Technology Hydrogen Futures Park proposal in the Fort Missoula area (copy of the proposal attached). This proposal establishes the nation's first hydrogen-powered, sustainable college campus. \$6 million in funding is being requested for this project. The Commissioners look forward to working with the Delegation to accomplish this project.

Letters – The Commissioners signed letters to Montana's Congressional Delegation (Baucus, Burns, Rehberg), dated March 29, 2004, submitting a proposal and requesting the Delegation's support in upgrading Missoula County's Homeland Security/Public Safety Communications System, at a cost of \$6.6 million. Once complete, Missoula County's system will be completely interoperable, P-25 compliant and consistent with FCC 2008 standards. The Commissioners look forward to working with the Delegation to accomplish this goal.

Variance Request – The Commissioners signed (with Commissioner Evans abstaining) a Findings of Fact, Conclusions of Law and Decision, dated March 29, 2004, in the Matter of a Variance Request by Earl Pruyn. Dr. Pruyn had submitted a variance request to allow the repair of existing riprap on his property along the Bitterroot River located in Section 22, T 12 N, R 20 W, Missoula County. The request was denied. All events pertaining to this case are set forth therein.

Signature Page – The Commissioners reviewed and signed one (1) Claims Signature Page for the Larchmont Golf Course Accounts Payable Invoice Register dated March 29, 2004, in the amount of \$29,069.28. The Signature Page was returned to the County Auditor.

Other items included:

- 1) The Commissioners discussed a request from Bonner Development Group to help with funding to send a participant to the 2004 Smallwood Conference. Although this is a worthwhile conference, the County does not have funding in the budget for this; it was suggested to ask Peter Nielsen of the Health Department if any of the EPA Redevelopment Grant could be used for this purpose.

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

**TUESDAY, MARCH 30, 2004**

The Board of County Commissioners did not meet in regular session. Commissioners Carey and Evans left for Washington, D.C. where they will meet with the Montana Congressional Delegation and staff people and also Forest Service officials throughout the rest of the week.

**WEDNESDAY, MARCH 31, 2004**

The Board of County Commissioners did not meet in regular session. Commissioner Curtiss attended a MACo Conference Planning Committee meeting and also a meeting of the MACo Education Committee in Helena during the day.

THE WEEKLY PUBLIC MEETING SCHEDULED FOR THIS DATE WAS CANCELED AS ALL OF THE COMMISSIONERS WERE OUT OF TOWN.




BOOK 004 PAGE 0373

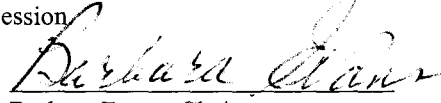
## THURSDAY, APRIL 1, 2004

The Board of County Commissioners did not meet in regular session. Commissioners Evans and Carey were in Washington, D.C. for meetings with the Congressional delegation and the Forest Service through Friday, April 2<sup>nd</sup>.

## FRIDAY, APRIL 2, 2004

The Board of County Commissioners did not meet in regular session.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

## MONDAY, APRIL 5, 2004

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 Curtiss signed the Claims List, dated April 1, 2004, with a grand total of \$30,161.02. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated April 2, 2004, with a grand total of \$58,272.88. The Claims List was returned to the Accounting Department.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 07 – CY2004 - Pay Date: April 2, 2004. Total Missoula County Payroll: \$897,862.95. The Transmittal Sheet was returned to the Auditor's Office.

Resolution No. 2004-042 – The Commissioners signed Resolution No. 2004-042, creating Rural Special Improvement District #8844 for the purpose of fire hydrant utility and maintenance of one (1) hydrant for Fort Courage Center, Lot 2A, Herbenson Tracts, Missoula County, Montana. The Commissioners passed a Resolution of Intention to Create RSID #8844 on February 17, 2004.

Extension Request – Per recommendation of the Office of Planning and Grants at their Planning Status meeting on April 5, 2004, the Commissioners approved and signed a letter (dated April 6, 2004) to Ron Ewart, Eli & Associates, Inc., approving his request for a minor plat adjustment of the Hawthorn Springs Subdivision preliminary plat. The changes are: 1) Based on Health Department requirements, many of the lots on the eastern side of the subdivision need to be enlarged (approx. 0.20 acres per lot) in order to fully contain the drainfields within the lot boundaries; and 2) A 30-foot wide strip of land has been added to the southwest boundary of Lot 96, which was previously the western boundary of the common area.

Extension Request – Per recommendation of the Office of Planning and Grants at their Planning Status meeting on April 5, 2004, the Commissioners approved and signed a letter (dated April 5, 2004) to Keith Belden, Morrison-Maierle, Inc., approving his request for a one-year extension of the final plat approval deadline for the Grape Arbor Subdivision. The new deadline will be April 30, 2005.

## TUESDAY, APRIL 6, 2004

The Board of County Commissioners met in regular session; all three members were present in the afternoon. Commissioner Curtiss and Rosalie Cates of MCDC traveled to Kalispell in the forenoon for a meeting with the Flathead County Commissioners regarding a Community Regional Development Corporation.

Claims List – The Commissioners signed the Claims List, dated March 29, 2004, with a grand total of \$4,532.00. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed four (4) Claims Lists, dated April 5, 2004, with the following grand totals:

- 1) \$19,258.25;
- 2) \$22,755.73;
- 3) \$25,503.12; and
- 4) \$7,801.17.

The Claims Lists were returned to the Accounting Department.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending March 31, 2004.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending March 31, 2004.

ADMINISTRATIVE MEETING

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

Resolution No. 2004-043 – The Commissioners signed Resolution No. 2004-043, dated April 6, 2004, a Budget Amendment for Partnership Health Center reflecting \$25,000.00 for PHC Dental Services. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Resolution No. 2004-044 – The Commissioners signed Resolution No. 2004-044, dated April 6, 2004, a Budget Amendment for Partnership Health Center reflecting \$11,115 in Poverello Local Grant Revenue. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Resolution No. 2004-047 – The Commissioners signed Resolution No. 2004-047, dated April 6, 2004, a Budget Amendment for Financial Administration reflecting \$57,308 (\$28,654 x 2) to show the cost of the contracts Missoula County entered into with Missoula Correctional Services. Due to a previous misunderstanding, this Amendment uses one-time sources to pay this difference. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Contract – The Commissioners signed a Professional Services Contract, dated April 6, 2004, between Missoula County and CBM Collections, Inc. for the collection of past due accounts for the Partnership Health Center, pursuant to the Agreement for Collection Services and Terms and Conditions. The contract term begins on February 1, 2004. All other terms and conditions are set forth therein.

Resolution – Approved at the March 10, 2004 Public Meeting, Chairman Evans signed a Resolution Authorizing Submission of Treasure State Endowment Program (“TSEP”) Application (dated April 6, 2004) for the construction of two new bridges, one on Deschamps Road over LaValle Creek, and one on Doney Road over Finley Creek. The document was returned to Public Works Director Greg Robertson for further handling.

Contracts – The Commissioners signed two (2) Professional Services Contracts between Missoula County (Weed District) and 1) Stewart Weed Control, Lolo; and 2) Nitro Green Professional Law Care, Missoula, for the conduction of the New Invaders Program by applying herbicides to designated Noxious Weed species following the herbicide instructions. The total amount of each contract shall not exceed \$7,500. The term for both contracts will be April 1, 2004 through November 30, 2004. All other terms and conditions are set forth therein. The documents were returned to Sharon Reed at the Weed Department for further signatures and handling.

Agreement – The Commissioners signed a Gravel Crushing and Stockpiling Agreement between Missoula County and Monroe Property Company, LLC (“MPC”) for the use of MPC land to crush rock for the purpose of reconditioning County roads in the Greenough and Blackfoot River area. The County will pay \$1.00 per cubic yard for pit-run rock to be crushed into graded gravel materials (for an approximate total of \$20,000). The term will be mid-April, 2004 through approx. July 1, 2004. All other terms and conditions are set forth therein.

Easement – The Commissioners signed a Public Road and Utility Easement, dated April 6, 2004 between H Lazy Heart, LLC, as owner of Tract B of COS #1669, Missoula County, and Missoula County for an easement for Hawthorne Springs Subdivision to construct, maintain and repair a roadway for the purpose of ingress and egress and to construct, maintain and repair public utilities. All other terms and conditions are set forth therein. The document was returned to Jack Owens at Stewart Title for further handling.

Closing Documents – The Commissioners signed Closing Documents for Lots 8, 9, and 10, Block 9, Phase 2, Missoula Development Park, with Montana 1031 Exchange Corp, Inc. as Qualified Intermediary for Woodahl Land & Livestock Company, LLC, Missoula (Harley-Davidson). The Contract Sales Price is \$1,000,000.00.

Option Agreement Extension – Per recommendation of the Missoula Development Authority, the Commissioners signed an Addendum B, dated April 6, 2004, to the Option to Purchase Agreement (dated April 24, 2003) with the Missoula Area Economic Development Corporation (“MAEDC”) for the University of Montana, for the purchase of Lots 1-10, Block 12, Phase 5, Missoula Development Park. The Addendum extends the expiration date for a period of twelve (12) months. All other terms and conditions of the Option to Purchase shall remain the same. The document was returned to Barb Martens in the Projects Office for further signatures and handling.

Extension Request – Per recommendation of the Office of Planning and Grants, the Commissioners approved and signed a letter, dated April 6, 2004 to John Kellogg, Professional Consultants, Inc., approving his request for a one-year extension of the final plat approval deadline for the Dibrito Acres Summary Subdivision. The new deadline will be April 16, 2005.

Board Approval – Per approval of the Seeley Lake Refuse District Board (“SLRD”) on March 22, 2004, the Commissioners approved and signed a Request for Board Appointment, appointing Christine Jewett to the SLRD Board.

Resolution No. 2004-045 – The Commissioners signed Resolution No. 2004-045, dated April 6, 2004, abandoning all of that portion of the Unnamed Road Plat Book 1, page 049, sheet 119, road situate in the SW¼ of Section 31, T 15 N, R 20 W, PMM, Missoula County, Montana, for the following reasons: 1) the property is being subdivided; 2) the road does not physically exist anymore; and 3) Book 1 Road does not begin or end anywhere near a county road or state highway.

Resolution No. 2004-046 – The Commissioners signed Resolution No. 2004-046, dated April 6, 2004, abandoning all of that portion of the GLO trail noted as “the trail to Jocko Valley” and shown on the General Land Office plat dated 1870 for T 14 N, R 20 W, situate in Tract 1 of COS 358 in the SE¼ of Section 1, T 14 N, R 21 W, and the SW¼ of Section 6, T 14 N, R 21 W, PMM, Missoula County, Montana, for the following reasons: 1) the property is being subdivided; 2) the road does not physically exist anymore; and 3) travel is now serviced by Interstate 90, the Frontage Road and Highway 93.

Letter – The Commissioners signed a letter, dated April 6, 2004, to the Bonner Development Group, Inc. Board of Directors, advising them that Missoula County funding is unavailable to send a representative from the Milltown Superfund Site Working Group to the Smallwood 2004 (in May) Conference: Creating Solutions for Using Small Trees. The Commissioners feel that this conference is worthwhile and hope funding can be found from another source.

Request for Action – Chairman Evans signed the cover sheet and certifications for the Missoula County/YWCA Technical Submission to HUD for the transitional housing program (operated by the YWCA) for single women and their children, most of whom are homeless due to domestic violence. The County will receive \$25,872 in grant money for a one-year contract for this project. The documents were returned to Kristina Swanson in the Office of Planning and Grants for further handling.

Request for Action – Chairman Evans signed the cover sheet for the WMMHC/Turning Point SHARE House Annual Progress Report ("APR") to HUD for the detoxification and transitional housing program (operated by WMMHC) for individuals who are homeless and chemically dependent. This APR sets forth the previous year's program activities and expenditures. The County received \$393,330 in grant money for a two-year contract for this project. The documents were returned to Kristina Swanson in the Office of Planning and Grants for further handling.

Other items included:

- 1) The Commissioners discussed and authorized the advertising of a Public Hearing for Public Works Fees.

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

#### WEDNESDAY, APRIL 7, 2004

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was on vacation April 7<sup>th</sup> through the 9<sup>th</sup>.

Claims Lists – Commissioners Carey and Curtiss signed four (4) Claims Lists, dated April 6, 2004, with the following grand totals:

- 1) \$3,174.14;
- 2) \$56,807.95;
- 3) \$410.00; and
- 4) \$6,482.08.

The Claims Lists were returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtiss signed two (2) Claims Lists, dated April 7, 2004, with the following grand totals:

- 1) \$22,982.18; and
- 2) \$2,325.12.

The Claims Lists were returned to the Accounting Department.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Shirley E. Faust, for the month ending March 31, 2004.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

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

Agreement & Resolution No. 2004-053 – The Commissioners signed a Memorandum of Agreement, dated March 29, 2004 between Missoula County and Missoula Aging Services ("MAS") for the provision of funding to assist with costs incurred for emergency sewer line repairs at MAS's facility at 337 Stephens Avenue, in the amount of \$13,924. The Commissioners also signed Resolution No. 2004-053, a Budget Amendment creating a special projects expenditure line in the amount of \$6,970 (from the Aging mill excess cash reserves) for one-half of the MAS sewer line repair; the remaining \$6,954 for the repair of the sewer line will come from County CDBG Program Income Funds. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Benefits Plan Amendment – Per approval at their meeting with Risk Manager Hal Luttschwager on April 6, 2004, the Commissioners signed Exhibit 8.07, Missoula County Employee Benefits Plan Amendment, dated April 7, 2004. The amendment relates to medical benefits (as set forth therein), and could save Missoula County up to \$30,000 in FY05.

Other items included:

- 1) The Commissioners agreed to postpone accepting bids on the Ice Rink Renovation (and changes in phasing) until April 14, 2004 in order to allow Scot Meader time to explain the project to the Fair Board and to 4-H Leaders.
- 2) The Commissioners received an update on the 20 acres in Clinton that 5 Valleys land wishes to gift to Missoula County. County Parks Coordinator Lisa Moisey will hold a meeting with the Clinton community on April 13, 2004 to further discuss this issue.

#### PUBLIC MEETING – April 7, 2004

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Jean Curtiss. Also present were Commissioner Bill Carey, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall and County Public Works Director Greg Robertson. Commissioner Barbara Evans was on vacation.

#### Pledge of Allegiance

**Public Comment**

None

**Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted during the past two weeks and approve the weekly claims lists in the amount of \$339,068.96. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

**Bid Award (Missoula County Fair): Ice Rink Addition**

Acting Chair Curtiss stated that the bid award for the Ice Rink Addition had been postponed to next Wednesday, April 14, 2004.

**Hearing (Certificate of Survey): Simons Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 2 of COS 3988, located in the southeast one-quarter of the southeast one-quarter of Section 31 and the southwest one-quarter of the southwest one-quarter of Section 32, Township 16 North, Range 19 West.

Michael H. Simons has submitted a request to create four additional parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 10 acres in size located near Arlee, Montana. Michael proposes to create one approximately two acre parcel for transfer to his daughter, Jennifer C. Simons, 20 years old; one approximately two acre parcel for transfer to his daughter, Abby J. Simons, 2 years old; one approximately two acre parcel for transfer to his daughter, Emily Jo Simons, 5 years old; and one approximately two acre parcel for transfer to his son, Harry A. Simons, 14 years old; and keep the remaining approximately two acre parcel. All parcels are intended for residential purposes.

The history of the parcel is as follows: A Warranty Deed was filed in 1978 deeding the parcel of 17 plus acres to Michael and Peggy Doney. The parcel was deeded to E.G. and Jean Bilton in October, 1992. The Biltens deeded the Tract to Michael Simons in May, 1994.

The property is located in the Flathead Indian Reservation. Pursuant to the Memorandum of Agreement between Missoula County and the Confederated Salish and Kootenai Tribes, a copy of the affidavit was sent to the tribes for comment. None was received.

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

Mike Simons was present and came forward to answer any questions the Commissioners may have.

Acting Chair Curtiss stated that the Board is charged with asking applicants questions to determine if this is an attempt to evade subdivision review. She asked if Mr. Simons purchased this property with the intent of dividing it?

Mike Simons stated that was not his intent.

Acting Chair Curtiss asked if he intended to transfer this property within the next year?

Mike Simons stated he would be transferring the property to his children within the next year.

Acting Chair Curtiss stated that some of the children are under legal age. Have trusts been established for those children?

Mike Simons stated he had contacted an attorney who advised him to use the Minors Act Trust.

Acting Chair Curtiss asked if there were any current plans to develop the property.

Mike Simons stated there were not.

Acting Chair Curtiss asked if the recipients lived on this property.

Mike Simons stated that was correct, his children live with him.

Acting Chair Curtiss asked if he had spoken to anyone at the County about going through subdivision review.

Mike Simons stated that he had not.

Acting Chair Curtiss asked if he was attempting to evade subdivision review.

Mike Simons stated that he was not attempting to evade subdivision review.

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

Commissioner Carey moved that Board of County Commissioners approve the request by Michael H. Simons to create four additional parcels by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Acting Chair Curtiss stated that Mr. Simons would receive a letter of approval. The approval does not mean that the property is approved for zoning compliance, floodplain or septic systems, or that it was reviewed for adequate access.

**Hearing (Certificate of Survey): Leishman 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 50A of COS 5263, located in the northeast one-quarter of Section 17, Township 14 North, Range 20 West.

Jason T. Leishman has submitted a request to create three additional parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 15 acres in size located near Huson, Montana. Jason proposes to create three parcels. One parcel will be approximately 5 acres for transfer to his daughter, Kinsey Leishman, a minor; an approximately 2.5 acre parcel for transfer to his father, Terry, for residential purposes; and a 2.5 acre parcel for transfer to his father-in-law, Robert Foster, for residential purposes. He will keep the remaining approximately 5 acre parcel for residential purposes as well.

The history of the parcel is as follows: Geneva Cates had this property divided into 20 acre tracts in 1979, COS 1925. The property was then transferred to Spitz War Bonnet Lodge January, 1985 by Quit Claim Deed. Leon and Catherine Spitz deeded the property to Vern and Mary Byrd in November, 1991. The property was later deeded back to Leon Spitz, who deeded the property to Harry Schwaigert in December, 1992. The Schwaigerts deeded the property to Colleen Baker and Michael Smart in August, 1999. Colleen and Michael applied and were approved to do a family transfer of 15 acres to their son. The 15 acre tract, 50A, was deeded to Thomas P. Haffey in August, 2002. Jason Leishman was deeded the property February 2, 2004.

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

Jason Leishman was present and came forward to answer any questions the Board may have.

Acting Chair Curtiss stated that Mr. Leishman purchased this property just a few months ago. She asked if he purchased the property with the intent of dividing it.

Jason Leishman stated that he did intend to transfer property to his daughter and he has a trust set up for her. His daughter Kinsey is 14 years old.

Acting Chair Curtiss asked if these transfers were going to be done within the next year.

Jason Leishman stated that he did intend to do so within the next year.

Acting Chair Curtiss asked if Mr. Leishman held the trust for his daughter.

Jason Leishman stated that was correct.

Acting Chair Curtiss asked if the property is sold, will the money still be held in that trust.

Jason Leishman stated it would be, but there are no plans to sell the property, he hoped his daughter would build a house there someday.

Acting Chair Curtiss asked if Kinsey lived with him.

Jason Leishman stated that was correct.

Acting Chair Curtiss asked if Mr. Leishman had talked to anybody at the County about subdivision review.

Jason Leishman stated he had not.

Acting Chair Curtiss asked if Mr. Leishman was in the business of building or developing property.

Jason Leishman stated he was not.

Acting Chair Curtiss asked if Mr. Leishman was attempting to evade subdivision review.

Jason Leishman stated he was not.

Acting Chair Curtiss stated that Mr. Leishman said he intended to divide the property when he bought it. Would that affect the Board's decision.

Colleen Dowdall stated it would be part of the evidence used to determine if the Board believes there is an attempt to evade subdivision. The question is particularly pertinent to the parcels he will keep for himself and as trustee for his daughter.

Jason Leishman stated his in-laws live in Arizona and spend three or four weeks in Montana every summer. They are just getting to retirement age and would like to build a house here. The same goes for his father.

Colleen Dowdall asked if there were any improvements on the property at this time.

Jason Leishman stated there were not. He does not reside on the property.

Colleen Dowdall asked if he intended to reside on the property.

Jason Leishman stated that he may build a house there.

Colleen Dowdall asked if he intended to keep the remainder parcel.

Jason Leishman stated that was correct.

Acting Chair Curtiss stated that it sounds as if Mr. Leishman intended to divide the property when he purchased it, which seemed like a subdivision in her mind.

Jason Leishman stated that there has been talk for years about finding a place up here for his in-laws and his father. They come up from Arizona and he is the only family here. They have the means to build a house here and have wanted to find some property for years. That was the intent, to provide a place for them to build a house and be closer to family.

Acting Chair Curtiss stated that this information is on record so that if in the future, somebody questions the division which was later sold as a subdivision, Mr. Leishman's intention is on record.

Acting Chair Curtiss opened the public hearing.

Ken Jenkins, Montana Northwest Company, wanted to clarify for the record that there is a difference between the intent to subdivide or intent to create parcels for family. They are two very distinctly different things.

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

Commissioner Carey moved that the Board of County Commissioners approve the request by Jason T. Leishman to create three additional parcels by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

#### **Hearing: Petition to Create Turah Meadows Water and Sewer District**

This is 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 was checked and verified. The petition to create a proposed Turah Meadows Sewer and Water District was examined and found that it contains one valid signature of a registered voter that owns the property within the district. One voter is eligible to vote in that district. The one signature on the petition is 100% of the registered voters for the district, thereby meeting the requirements of 7-13-2204 MCA.

The areas to be included in the Turah Meadows Sewer and Water District are described as follows: All those parcels of land situated in the southeast quarter of Section 35, Township 13 North, Range 18 West, Principal Meridian, County of Missoula, State of Montana, being more particularly described as follows: Lots 1 through 67, C1, C2 and C3 as shown on the preliminary plat of Turah Meadows and as shown on Exhibit A attached to the petition.

Kim Cox, Assistant Chief Deputy Clerk and Recorder, stated that she did verify the signatures on the petition.

Mike Sehestedt stated that the procedure for creating a water and sewer district is to conduct a public hearing. The issue to be decided is what are the appropriate boundaries. The Board can add property that would benefit or remove property that appears from testimony that would not benefit. If the Board decides to go forward, the district is created by virtue of an election by the eligible voters of the district. All of the registered voters who reside within the boundaries of the district can vote, as can any registered voter who does not reside in the district but who own property there. The question will be whether or not the water district be created and the election can be combined with the election of trustees of the district. Once the water district is created, it is a limited purpose unit of local government. Schools are a governmental entity for the purpose of providing education to children. A sewer and water district is a unit of local government, independent of the County with its own elected officials, responsible for providing sewer and/or water service to property within the described district.

Acting Chair Curtiss stated this particular sewer and water district has one owner.

Mike Sehestedt stated the Board has to decide whether or not to create the district and whether or not the boundaries are appropriate. Any protest would happen at the ballot box. These requests are being seen more frequently because the Health Department has chosen to require that community drainfields be owned and maintained, not by Homeowners Associations, but by a unit of local government.

Acting Chair Curtiss opened the public hearing.

Jim Carlson, Director of Environmental Health at the City-County Health Department, stated that this request is in front of the Board in part because of Health Department regulations which require where community sewer is being installed that they either form a County Maintenance RSID or a water and sewer district. In this case, the choice is to form a water and sewer district. It is a small community system. Based on some modeling that has been done, they will be required to install a system that removes at least 60% of the nitrates from the wastewater which will, in turn, require a more sophisticated septic system than is normally seen. He would recommend that the Commissioners approve the petition.

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

Commissioner Carey moved that the Board of County Commissioners approve the petition to create the Turah Meadows Sewer and Water District. The areas to be included are described as follows: All those parcels of land situated in the southeast quarter of Section 35, Township 13 North, Range 18 West, Principal Meridian, County of Missoula, State of Montana, being more particularly described as follows: Lots 1 through 67, C1, C2 and C3 as shown on the preliminary plat of Turah Meadows and as shown on Exhibit A attached to the petition. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Mike Sehestedt stated that he will prepare a formal resolution submitting the question to create the district to a vote and setting a timeline. It will be done as a mail ballot election. He has another request that is set for an election date of July 18, 2004 and expected this could be done at the same time.

**Hearing: Petition to Create Goodan Keil Water District**

This is 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 was checked and verified. The petition to create a proposed Goodan Keil Water District was examined and found that it contains thirty (30) valid signatures of registered voters that own property within the district. One hundred seventy (170) voters are eligible to vote in that district. Eighteen percent (18%) of the registered voters of the district have signed the petition, thereby meeting the requirements of 7-13-2204 MCA.

The areas to be included in the Goodan Keil Water District are described as follows: All those parcels of land situated in Sections 35 and 36, Township 14 North, Range 20 West, Principal Meridian, County of Missoula, State of Montana, being more particularly described as follows: Certificate of Survey 1440 and Certificate of Survey 1625, EXCEPTING THEREFROM: Certificate of Survey 4711, Tracts 10, 12, 13 and 15 of Certificate of Survey 1625, Certificate of Survey 2607 and as shown on Exhibit B attached to the petition.

Mike Sehestedt stated that the procedure, purpose and outcome of this request is the same as the previous request. However, this request is being generated by the residents of the neighborhood.

Kim Cox stated that she verified the signatures on the petition for this district. There were adequate signatures to proceed.

Mike Sehestedt stated that the petition can move forward with signatures from 10% or more of the eligible voters. Final creation of the district depends on a majority of those voting in favor at an election to be called subsequent to this public hearing, if the Commissioners decide to move forward.

Acting Chair Curtiss opened the public hearing.

Steven Rossiter stated that he was President of the Goodan Keil Homeowners Association. This petition was brought forward by the Homeowners Association as they feel a water district would permit them to better administer the resource as opposed to the Homeowners Association. The Homeowners Association has been administering the water resource up until this point.

Acting Chair Curtiss stated a letter protesting the creation of the water district was received from Charles H. Rossell on Thornbird Lane.

Jim Carlson, Director of Environmental Health, stated that one of the reasons the Health Department encourages the formation of either water and sewer districts or County maintenance RSID's is it gives the operators of these systems the ability to place dues on the tax notice as opposed to Homeowners Association dues. That method has been shown to be more successful in generating the financing necessary to maintain the systems.

Acting Chair Curtiss stated that Mr. Rossell is protesting the creation of the water district because it would cause a financial hardship to have these fees added to his tax bill. She asked if the Homeowners Association currently assessed dues to its members.

Steven Rossiter stated that they do currently assess dues.

Acting Chair Curtiss asked if the Homeowners Association dues would be reduced by the amount that will now be collected on the tax bill.

Steven Rossiter stated the Homeowners Association dues are billed separately from the water bill. The dues will not change and the water bill will come from a different entity. There is no intention at this point to change the water rates so there should be zero financial impact.

Ron Ewart asked at what point a water and/or sewer district should be created. How big does a development need to be. He works with development and would like to know when he should be requesting that a district be created.

Jim Carlson stated that a water system is considered public, which is regulated by State and Federal government, when it has 15 or more connections or 25 or more people being served every day. At that point, the system goes from essentially no requirements to very stringent requirements for monitoring and design. When there are three or more connections to a sewer system, it is considered multi-family with specific maintenance requirements. It is sometimes difficult for individuals or Homeowners Associations to ensure proper maintenance is occurring without adequate funds for repair and maintenance.

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

Commissioner Carey moved that the Board of County Commissioners approve the petition to create a Missoula County Water District, Organization and Incorporation of the Goodan Keil Water District and Miscellaneous Election of



Directors. The areas to be included are described as follows: All those parcels of land situated in Section 35 and Section 36, Township 14 North, Range 20 West, Principal Meridian, County of Missoula, State of Montana, being more particularly described as follows: Certificate of Survey 1440 and Certificate of Survey 1625, excepting therefrom: Certificate of Survey 4711; Tracts 10, 12, 13 and 15 of Certificate of Survey 1625; Certificate of Survey 2607; and as shown on Exhibit B of the petition. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Mike Sehestedt stated he would prepare a formal Resolution setting the election and providing for simultaneous election of a Board of Trustees. He would expect to set the date for July 18, 2004.

**Hearing: Gallatin Estates (40 lots on 33 acres) – off Waldo Road, northwest of the Wye**

Jackie Corday, Office of Planning and Grants, presented the staff report.

Steven and Terry Crofts, represented by Ron Ewart of Eli & Associates, are requesting approval of Gallatin Estates Subdivision, a proposal to subdivide a 33.77 acre parcel into 40 approximately one-half acre lots. The property is located between Interstate 90 and Waldo Road, one mile west of Highway 93 North.

There will be a new road, Gallatin Loop, that will come off Waldo Road. It will be paved to a 24 foot width with 5 foot wide boulevard sidewalks on both sides. The property has very level to rolling topography, with no slopes over 25%. Four common areas are proposed. Common Area 1 will be left open on the north and south so that wildlife can continue to use that corridor to get across Waldo Road and into the hills. Common Area 2 is a riparian area that follows O'Keefe Creek through the area. O'Keefe Creek goes under the highway in a 10 x 10 culvert, which is used heavily by wildlife. Common Area 3 is an active play area. Common Area 4 is a joint play/common drainfield area.

The property is unzoned. It is designated in the 1979 Wye/O'Keefe Creek Area Plan as a combination of 2 to 6 dwelling units per acres and 6-16 dwelling units per acre. It is just outside the Urban Growth Area. It is serviced by the Frenchtown Fire Station near the Wye. Children will attend Frenchtown Schools. The majority of the lots will be served by a community sewer system, although some of the lots may have individual systems. It will also have a community water system. The Homeowners Association will be responsible for maintenance of the two systems, as well as maintenance of the common areas and sidewalks.

Staff is recommending a condition in regard to sidewalks along Waldo Road, that the developer install an 8 foot wide asphalt pathway, separated from the road, that begins at the junction of Gallatin Loop and go to the eastern corner of the property. This particular property will be setting the trend for development in the area. As property owners to the east come in with development proposals, they will be required to continue the pathway. The condition is recommended in response to a variance request for pedestrian facilities on Waldo Road. Staff is recommending approval of the variance to the west of the junction of Gallatin Loop, but not to the east.

The second variance request is from the curb and gutter requirement along Gallatin Loop. In this situation, there is an 80 foot right-of-way being dedicated, which will provide wide, shallow grassy swales with boulevard sidewalks. The developer will also be installing trees every 50 feet. Staff felt that was appropriate and drainage would be acceptable. With the separation of the boulevard sidewalks, staff felt curbs would not be necessary to protect pedestrians and on-street parking will not be needed. The half acre lots will have long driveways and the covenants require double car garages.

There is a conditional right-of-way between Lots 16 and 17 on the eastern side of the property. The adjacent property is approximately 80 acres. If it is developed at some time in the future, there can be a connection. The street and conditional right-of-way are public.

Several of the conditions address protection of wildlife. O'Keefe Creek runs through the property and is a heavily used wildlife corridor. The conditions were designed to mitigate the impacts the subdivision will have on the wildlife. The applicant is not protesting any of these conditions. The other conditions addressing roads, walkways, fire protection and public health and safety are ones seen routinely.

Acting Chair Curtiss asked why the fence between the play area and common area has specific recommendation.

Jackie Corday stated that the recommendation was for something fairly solid that would denote a boundary, would not require much maintenance and would be aesthetically pleasing.

Ron Ewart, Eli & Associates, developer's representative, stated that Terry and Dean Crofts, the developers, were also present. They own Montana Homes, a Marlette manufactured home dealer on West Broadway. Marlette Homes are quality built in Oregon. Manufactured homes are planned for this development. Each home will have a front porch and a double car garage. People can choose their lot and their home so there will be some diversity. The lots are about one-half acre and landscaping is planned. This was redesigned several times in consultation with OPG, Fish, Wildlife and Parks and Long Range Planning. This is a reasonable location close to the Wye, with a good transportation system. They have taken steps to protect O'Keefe Creek and the natural resources. The subdivision will be served by a public sewer and water system. He was not sure if a Sewer and Water District would be created to maintain the system. The road section works best in this situation. The easement is 80 feet wide which leaves plenty of room for the 24 foot paved street, 2 foot shoulders, a wide swale of about 12 feet and asphalt walkways on both sides. They are in agreement with the conditions. They did question placing the walkway along Waldo Road at this time when it could potentially be done in the future all at once, all the way to Highway 93. He thanked Jackie for her work on the project.

Acting Chair Curtiss opened the public hearing.

Bekka Mercer stated that she and her husband would be home buyers in this subdivision. It would be a great honor to live there.

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

Commissioner Carey moved that the Board of County Commissioners conditionally approve the variance request from Section 3-2(8)(A)(iii) of the Missoula County Subdivision Regulations to not provide pedestrian facilities along Waldo Road, based on the findings of fact in the staff report and subject to the conditions in the staff report. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(7) of the Missoula County Subdivision Regulations to not provide curb and gutter along Gallatin Loop, based on the findings of fact in the staff report. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey moved that the Board of County Commissioners approve the Gallatin Estates Subdivision as submitted and amended February 20, 2004, based on the findings of fact in the staff report and subject to the recommended conditions of approval. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Acting Chair Curtiss stated she was glad to see a subdivision for modular homes in the County.

#### **Gallatin Estates Subdivision Conditions of Approval:**

1. The final plat and covenants shall conform to the revised preliminary plat and covenants submitted by the applicant on February 20, 2004.

#### **Roads and Walkways**

2. Prior to final plat approval, the applicant shall install an 8 foot wide asphalt bike/walk pathway separated from Waldo Road from the corner of the intersection of Gallatin Loop with Waldo Road to the northeastern corner of the property, subject to the approval of Public Works and OPG. *Subdivision Regulations Article 3-8(A)(iii), Health Department and OPG recommendation.*
3. Prior to final plat approval, the applicant shall construct a creek crossing with either a concrete bottomless box culvert or a 3-sided structural steel-plate pipe arch (natural bottom) with concrete footings that will free-span the creek and adjacent floodplain and allow at least a 6 foot clearance from the top of the structure to average spring run-off water level in O'Keefe Creek (2 year flood elevation or bank full discharge), subject to the review and approval of Public Works and OPG. *Subdivision Regulations Article 3-1(10), 3-13, Public Works and OPG recommendation.*

#### **Fire**

4. Final plans for provision of a water supply for fire fighting shall be reviewed and approved by the Frenchtown Rural Fire District and Public Works prior to final plat approval. *Subdivision Regulations Article 3-7 and Frenchtown Rural Fire District recommendation.*
5. Article 1, Section 14 of the covenants shall be amended to provide for Homeowners Association maintenance of the fire hydrants within the subdivision. *Subdivision Regulations Article 3-7 and OPG recommendation.*

#### **Public Health and Safety**

6. The covenants shall be amended prior to final plat approval as follows: Include a new section entitled "Radon Mitigation" that states: "EPA has designated Missoula County as having a high radon potential (Zone 1). All residences should incorporate passive radon mitigation systems into the design." *Subdivision Regulations Article 3-1(1)(D), City-County Health Department and OPG recommendation.*

#### **Natural Resources and Weeds**

7. The applicant shall install a 4.5 foot to 5 foot high 4-rail wooden post fence along the northwestern border of Common Area #3 and extending approximately 50 feet along the Gallatin Loop right-of-way to the northwest. The applicant shall also install two signs on the fence on the west and along the road, approximately 2 foot by 2 foot in size, that state the following: "PLEASE KEEP OUT OF CREEK AREA." Plans for the signs and fence shall be submitted to OPG for review and approval prior to final plat approval. *Subdivision Regulations Article 3-1(10), 3-8(7)(E) and OPG recommendation.*
8. Article I, Section 19 of the covenants (Riparian Plan) shall be amended to add the following as the last sentence of the second paragraph: "No other creek crossing structures are allowed" and to revise the last sentence under A) as follows: "No motorized vehicles, bicycles, pets, horses or other livestock are permitted." *Subdivision Regulations Article 3-1(10), 3-13(4)(B) and OPG recommendation.*
9. Article I, Section 11 of the covenants (Fences) shall be amended as follows: Add the following as the second sentence: "Barbed wire fencing is prohibited within the subdivision." *Subdivision Regulations Articles 3-1(10) and OPG recommendation.*
10. Article II, Section 3 of the covenants shall include the following: "Covenants restricting the use of the land for the purpose of protecting wildlife and riparian areas are enforceable by Missoula County. The right to enforce the covenants does not obligate Missoula County to inspect the property and no claim of damages may be made against the County as the result of undetected lack of compliance with wildlife and riparian protection requirements." *Subdivision Regulations Article 3-1(10), Fish, Wildlife and Parks and OPG recommendation.*
11. A Revegetation Plan for disturbed sites shall be submitted to and approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and County Weed District recommendation.*
12. Article I, Section 13 of the covenants shall be amended to include the following as the last sentence: "The Declarant shall be responsible for maintenance of the boulevard areas and walkways until the Homeowners Association has formed and has the budget to accept the above described responsibilities."
13. Article I, Section 14 of the covenants shall be amended to include the following as the last sentence: "The Declarant shall be responsible for maintenance of the common areas and community water and sewer systems until the

Homeowners Association has formed and has the budget to accept the above described responsibilities.” *Subdivision Regulations Article 5-1(5)(k) and OPG recommendation.*

**Consideration: Ireland Acres (5 lots) – off Sapphire Drive in Lolo**

Liz Mullins, Office of Planning and Grants, presented the staff report.

Christopher and Billie Ireland, represented by Ron Ewart of Eli & Associates, are requesting approval of Ireland Acres, a proposal to subdivide an 8.40 acre parcel into 5 lots, ranging in size from 1.04 acres to 2.53 acres. The property is accessed by traveling south from Lolo on Highway 93, turning west onto Mormon Creek Road and then turning south onto Sapphire Drive for one-quarter mile.

The property is unzoned. The 2002 Lolo Regional Plan recommends Residential uses at two dwelling units per acre. The proposed density is approximately 1 dwelling unit per 1.7 acres.

The property is on a hillside with slopes ranging between 11 percent and 17 percent. Lower Mormon Ditch is an on-site irrigation ditch in the central area of the property. Maclay-Lolo Ditch is an adjacent off-site irrigation ditch along the southern boundary of the property. Parkland is not required in minor subdivision, however, the applicant is proposing a common area to buffer between Ireland Drive and the Shelby Subdivision to the north.

Sapphire Drive is an off-site County road paved to a 24 foot surface width within a 60 foot right-of-way. Ireland Drive is a proposed private cul-de-sac drive. Ireland Drive is proposed to cross the Lower Mormon Ditch and then turn eastward, in a cul-de-sac loop design. A 24 inch culvert will be installed where the road crosses the irrigation ditch.

There are 2 variances being requested which concern Ireland Drive. The first request is to allow for reduced private road width from 24 feet to approximately 20 feet for Ireland Drive. The applicant proposes to pave Ireland Drive to a 20 foot surface width within a 60 foot easement. The Public Works Department supports the variance request since the reduced width would minimize cut and fill and minimize the disturbance on the hillside. Curt Belts, Missoula Rural Fire District, stated that the access to the property is acceptable. Staff recommends approval of the variance request.

The second request is from the requirement that prohibits lot division by an easement for Lots 2, 3 and 4. The Public Works Department supports the variance request since the road design keeps the road grade below 8 percent and minimizes cut and fill. Staff recommends approval of the variance request.

The cul-de-sac is proposed as a 35 foot paved radius within a 45 foot right-of-way radius. Subdivision Regulations require cul-de-sac bulbs to be a 50 foot right-of-way radius, which is a recommended condition of approval. Swales will be constructed along the proposed Ireland Drive to provide for drainage retention, storage and percolation. There is a 30 foot private access easement extending off the Ireland Drive cul-de-sac bulb across Lot 4 to provide access to Lot 5.

There is a 60 foot private roadway easement along the south boundary. Other Certificates of Survey filed during the same time frame showed connectivity easements to the west. The applicant is requesting permission to remove the easement from the plat. The governing body does not have jurisdiction over private road easements. Staff is recommending a condition that evidence that the easement does not encumber the property be provided.

The applicant is proposing a 5 foot wide gravel walkway within the pedestrian easement in the common area. The walkway would allow for a potential pedestrian connection between Sapphire Drive and Nature Drive. However, Nature Drive is a private roadway and serves lots and tracts outside the subdivision. Users of the Nature Drive easement have objected to the use of Nature Drive for motorized and non-motorized transportation. Staff recommends that the applicant provide evidence of legal access to connect the pedestrian easement to Nature Drive. Staff is recommending a condition that if the connection to Nature Drive is not feasible, then plans for a 5 foot wide walkway within the common area shall be submitted. An RSID/SID waiver statement is included on the face of the plat waiving the right to protest road improvements including non-motorized facilities. Staff recommends that this RSID/SID waiver statement specify Sapphire Drive.

Todd Klietz, Floodplain Administrator, commented that the earlier 13 lot split reduction to 5 lots was partially due to high groundwater associated with the Lower Mormon Ditch. The Lolo Community Council noted that several neighbors recommended that the ditches be “lined” for the high groundwater conditions. The Lolo Community Council and the Missoula County Sheriff’s Office suggested that the subdivider fence the ditches to protect children from falling into the ditches. The proposed covenants include a statement that there may be seepage from the ditches and that water may overflow from the culverts.

Greg Robertson, Public Works Director, visited the site and noted that the Lower Mormon Ditch is poorly graded and susceptible to overtopping. He recommended that the channel be lined using a geo-synthetic fabric to prevent seepage and outfitted with an emergency overflow.

Gordon Sorenson, who represents the ditch owners, recommended that in lieu of lining and enlarging, that the ditch be enclosed in an underground pipe. Mr. Sorenson stated this option would be less expensive and would address the concern regarding child safety. Staff recommends a condition of approval that the Lower Mormon Ditch be enclosed within an underground pipe.

Gordon Sorenson also stated that Ireland Acres subdivision does not have water rights to the Lower Mormon Ditch. Staff recommends that evidence of water rights to the ditch be provided. If there are no water rights, the irrigation ditch easement to the common area will need to be removed from the plat and the covenants will need to be amended.

The homes are proposed to be constructed elevationally above the Lower Mormon Ditch, but beneath the much larger Maclay-Lolo Ditch. Eli and Associates Engineer Jeffrey Pearson stated that grading will be done in a manner as to minimize hillside disturbance by fitting homes into the hillside, using daylight basements and that construction techniques will be utilized to provide for proper drainage and footings.

Todd Klietz, Floodplain Administrator, recommended that for pre- and post-construction, a registered professional engineer certify that construction techniques utilized will prevent structural damage if flooding occurs because of the irrigation ditches, which is a recommended condition of approval. The covenants provide a disclaimer for the developers regarding potential flooding due to the irrigation ditches. Staff recommends that the subdivision approval be conditioned upon indemnifying Missoula County. The northwest corner of the subdivision (near Nature Drive) is low and relatively level which causes saturation during wetter periods of the year. Staff recommends a condition that this area is designated as a No Build Zone.

Conditions of approval not previously mentioned cover final plans for water supply for fire protection; that the covenants reflect comments from Fish, Wildlife and Parks; a Revegetation Plan; a provision in the covenants regarding radon mitigation systems; and additional utility easements on the plat.

The Lolo Community Council expressed several concerns in a comment letter. They included concerns for groundwater conditions, stormwater run-off, circulation elements (pedestrian and vehicular) and potable water supply. The Lolo Community Council recommends the Board of County Commissioners deny the subdivision. The Shelby Water District has also expressed concerns for water availability and water contamination from the proposed subdivision.

Several letters have also been received from adjacent property owners. Concerns expressed include: road design, surface and subsurface run-off, irrigation ditch leakage and overflows, safety of the ditch, wildlife, traffic and legal access onto Nature Drive. These letters were distributed at Planning Status or are attached to the staff report.

Ron Ewart, Eli & Associates, Inc., developer's representative, stated that Chris Ireland, the applicant, was also present. He thanked Liz for her work on this project. This property is 8.4 acres in size with 5 lots. The average lot size is approximately 1.68 acres. The Lolo Regional Comprehensive Plan 1998 Update recommends a density of 2 dwellings per acre. This will be a nice development. Mr. Ireland intends to build nice homes and there are some very strict covenants, which will need some revisions. The Homeowners Association will own and maintain the road and the common area. The homes will be constructed into the hillside using grading and drainage techniques. Access is via a 20 foot paved road. With the original proposal of 13 lots, they were proposing a 24 foot wide road with a separated sidewalk. Since the number of lots has been reduced to five, there is less hillside disturbance and a 20 foot wide paved road with 2 foot shoulders will provide 24 feet of unobstructed width. The average grade across the property is approximately 13 percent. Access is from Sapphire Drive. The property has about 110 feet of frontage on Sapphire Drive, with good site distance left and right. Sapphire Drive is a County road in good condition. Just to the north of the entrance to the subdivision are two sumps that work very well. The road grade must be kept at an 8% grade or less. The steepest part of the property is in the northeast corner, so the road could not come very far into the property. The first proposal was to take the road along the northern boundary, but after some re-engineering, the current proposal was determined to be the best, to keep the road away from existing subdivision, keep it at or below 8% and to cross the Lower Mormon Ditch. The homes will be set back from the road and there will be no need for on-street parking. Double car garages are being required with a 20 foot by 20 foot parking pad in front of them. The common area will be owned, maintained and beautified by the Homeowners Association and will serve as a buffer. They are also proposing there be a public pedestrian easement, it make planning sense and is good for the community. First American Title did a search to see if there is access to Nature Drive. The search results could not find anything specific that states this property has access to the road, nor does it specifically state it does not have access. However, they will assume the property does not have access to Nature Drive. Pedestrian traffic has existed on the road for many years and people walking on Nature Drive would not overburden the easement. To get to an existing home on Kimwood Drive it would be a short walk compared to going all the way down to Sapphire Drive to Mormon Drive and back to Kimwood Drive. It makes sense to allow the pedestrian connection. There is one ditch on the property, Lower Mormon Ditch. This ditch does not flow a great deal of water. The culvert that runs under Nature Drive is somewhere between 18 and 24 inches. The water goes through that culvert, makes a very sharp bend, then continues through the property. This property does not have water rights to the Lower Mormon Ditch. The subdivision is not impacting the ditch and the ditch is not impacting the subdivision. Water seems to run right in the very bottom of the ditch, not like the upper ditch, the Maclay-Lolo Ditch. That is a much bigger ditch and located off-site. There is a warning in the covenants that children or pets should not be allowed near it. It would be wise to fence off the southern boundary of those lots. The lower ditch is much less likely to be a drowning hazard and the subdivision has no water right to it. The subdivision does have water rights to the Maclay-Lolo Ditch, but it is doubtful if they would be used. He has talked with David Kottner and Gordon Sorenson regarding both ditches. Covenants for another subdivision addressing ditch issues were provided by Helena Maclay which he included in the covenants for this subdivision. Some changes have been made and there are others that have not yet been made. The Kolb's would not be concerned whether or not the Lower Mormon Ditch was piped if the users of the ditches were allowed to review and approve the subdivision covenants. They would like to propose that Condition 8 be revised as follows: "The covenants, in regards to use, maintenance and indemnification issues of the irrigation ditches, shall be reviewed and approved by the users of the Lower Mormon Ditch and the Maclay-Lolo Ditch." Piping the ditch would be an expensive undertaking. It would help to stop seepage from the ditch, but again, it is not their ditch, it is something that is there that needs to be worked around. The subdivision is not impacting the ditch and the ditch is not impacting the subdivision. The homes are sited above the Lower Mormon Ditch. They have conducted a lot of soil testing on the site, digging over 20 ten-foot deep holes. They found the soil to be quite good in relation to drainfields and construction. There is a small area with fractured bedrock, but no compacted bedrock, clay seams or other problems have been discovered. The Lower Mormon Ditch test holes all failed last year, so that ditch is obviously leaking. If the Kolbs want to pipe the ditch, they are welcome to do so, it is their ditch and they can do whatever they want. There is an easement on the property for the ditch. It would be in the covenants that if fences are installed, an opening would be provided for the users of the Lower Mormon Ditch to conduct maintenance. He requested that Condition 8 be changed as noted. One of the main reasons OPG recommended enclosing the ditch was they felt it would be a hazard to children. He did not feel it would be all that hazardous as it doesn't carry a lot of water. On Condition 5, it states that the easement shall connect with Nature Drive if it is established that this tract benefits from Nature Drive. He did not think any language would be found to that effect, nor language to the effect that it does not benefit, but the property does about the road. Can the private pedestrian easement still abut Nature Drive? No vehicular access is proposed.

Acting Chair Curtiss asked for public comments.

Sharon Reed stated she is protesting the easement rights being claimed to Nature Drive. There have never been easement rights off of Nature Drive to this lot. The easement for Nature Drive was created so that Gerald Tucker could get to and from his property. It serves three other houses beside Mr. Tuckers. She has lived in the area for 12 years and has never seen anyone access this property from Nature Drive. Just because this property abuts the easement does not give rights to use it. The distance that this property abuts Nature Drive is also in question due to varying easement widths. She would ask that pedestrian access to Nature Drive be denied. Nature Drive is a gravel road about 18 feet wide. Pedestrians would be walking down the middle of the road, the road is not set up for pedestrian access. The current pedestrian use of Nature Drive is permissive use from Mr. Tucker. She is also concerned about the terrain and the swales adjacent to Ireland Drive. The swales appear to be in the 30 foot common area which is the wettest area of the property. The walking path could be washed away. The 30 foot common area also does not serve as a very good buffer. Landowners have expressed concerns about the ditches, that piping them could protect children from drowning and protect people below them from flooding. The drainfields of the houses below the ditch are being compromised by the overflow of the ditches. This subdivision is depending on the drainage system of Sapphire Drive to hold the run-off water and there is no way to know if it will do that. They might need to construct their own drainage system instead of using other existing ones. The variance to divide the lots with a private access easement could open the possibility of future subdivision and should be denied. The covenants also take away landowners recourse in the event that the acts or omissions of the ditch owners cause flooding. She did not think the developer had the right to take away the ability to remedy the situation through a lawsuit, if it is the ditch owners' negligence that causes the problem.

Colleen Dowdall stated that there is a provision in the covenants where the Ditch Company is indemnified. The owners of the ditch water are asking it be included in the covenants because they want a provision that says if flooding occurs, the landowners would not sue them. It doesn't have anything to do with the County or its provisions, it has to do with the owners of the ditch protecting themselves because development is going to occur close to the ditch. The County is not requiring the provision; the Maclay family requested it be included in the covenants. It addresses whether this development will affect agricultural water users. The owner of the ditch is saying that development won't impact the ditch if landowners won't sue if the ditch fails. If the ditch is piped, that provision may go away. However, there has been no discussion about piping the Maclay-Lolo Ditch, which is off-site.

Greg Robertson stated that piping the ditch would take care of the seepage problem. He deals with the impacts of ditches on roads and neighbors all the time from ditch companies that don't properly maintain their systems. This subdivision will have an impact on the ditch both during construction and with the significant cuts required to install the road. That was why he recommended the ditch either be lined or piped. He felt it was a legitimate concern.

Acting Chair Curtiss stated that the ditch that leaks is the lower one and it will only be crossed in one area and the houses will be sited above it. Her feeling was that if this ditch leaks and causes problems below it, it is the ditch company's responsibility. Why should someone who is not affecting the ditch pay to have it lined. If it needs to be lined, it should be done by the ditch company.

Greg Robertson stated that the construction of the road likely will function as a conduit to intercept those flows that are seeping into the groundwater.

Acting Chair Curtiss stated Greg was talking about the swales, but wouldn't they siphon off the water away from the folks below.

Greg Robertson stated that might or might not happen, it depends on the soil characteristics. There is groundwater movement as noted by Ron with the failed perc tests and this will likely be exacerbated by the installation of the road.

Colleen Dowdall stated the south end of the subdivision is where the houses will be located. The road loops through and in the middle is the lower ditch which apparently leaks.

Greg Robertson stated the lower ditch is more at risk than the upper ditch which appeared to be fairly sealed off. The lower ditch is in a poorer state of maintenance.

Colleen Dowdall stated that was the one he described as poorly graded and at risk for overtopping.

Greg Robertson stated that was correct.

Colleen Dowdall stated the road will be constructed between the ditch and the Shelby Addition, so the road would need to be engineered adequately so surface water will drain along the roadway.

Greg Robertson stated the surface water is one component, the overtopping. The other issue is the ground water movement and that could clearly be a problem since the road will incise into the slope and may focus the ground water to a point on Sapphire Drive which is not likely to handle it; or concentrate it into the backyards of the folks down below.

Acting Chair Curtiss stated that if the ditch overflows, the road would not be an impediment. The more significant threat is from groundwater.

Greg Robertson stated the drainage system in the road should be to accept the run-off from the road. They are not typically designed to carry excessive run-off that could be created. Ditches have a tendency to do that. His main concern is the amount of cut and fill that will occur with installation of the roadway. Based on the information provided, the concerns of the folks below the ditch are legitimate and this could create more of a problem. That is essentially why he recommended isolating the ditch from the rest of the subdivision and proposed road, to try and mitigate its influence which could be exacerbated by road construction.

Ron Ewart stated that Greg was correct, swales along the road are to take care of drainage along the road. Most of the ground disturbance on this property will be for the road. Some of the water will percolate in the swales and the swales will also catch any overland flow, which he doesn't anticipate. The road will be compacted and built up with swales on both sides. The culvert where the road crosses the ditch will be 60 feet long, wide enough to carry the run-off from the swales

on both sides. The homes will be above the ditch. Only sloppy construction techniques that allow erosion would affect the ditch. He did not understand how this development will exacerbate the situation. A detailed drainage plan will be prepared. The sumps will not be solely relied upon, but they will take water during a high run-off.

Chris Ireland stated that he has walked the lower ditch all the way to where it comes out of Mormon Creek. The ditch is maybe a foot wide and eight inches deep where it runs through their property. The banks are about three feet high. There is a shut off gate at Mormon Creek that can control the water flow. There is no overflowing of the bank, the water is coming from underneath. The lower west corner of the property is the worst area. When they first discussed plans with folks in the area, they were going to put in a culvert and divide into 13 lots. That was reduced to 11 lots with a culvert. The landowners said the water was the way they wanted it and they did not want a culvert. They paid a lot of money for improved drainage around their homes because they had water in their basements. They said the water was not coming from the ditch, it was coming from underground springs. Since it was unknown whether it was ditch seepage or underground springs, he did not culvert the ditch. He cut the number of lots to five and left the ditch alone, because the land between the two ditches was dry. There is hardly any water in this ditch. Where it goes across Nature Drive there is a shape zigzag. Up Mormon Creek Road, where the Lower Mormon Ditch crosses the Maclay Ditch, there is a half culvert about 8 to 10 feet long. If there was any flow, it would go over its bank.

Colleen Dowdall asked if Mr. Ireland received any bids on how much it would cost to put the ditch in a pipe.

Chris Ireland stated it was somewhere around \$50,000 for both ditches. When he suggested to Mr. Kolb that he culvert the ditch, Mr. Kolb did not want that done. So then it was suggested that the ditch be lined. The Maclays wanted their ditch culverted, then Mr. Kolb said he wanted his ditch culverted. The lower ditch would cost around \$30,000. It is approximately 1,000 feet and Mr. Kolb wants a 24 inch culvert. He has no water rights to the ditch. The water problem already exists, it is not overflowing, it is seeping underground. The test holes below the Lower Mormon Ditch only failed after the ditch was opened for the year. His development is not affecting the ditch at all, except to cross it. The road cannot affect the ditch just by crossing it.

Ray DiPasquale, Lolo Community Council, stated that other Council members will be speaking about how the property reacts to rain water, opening the ditches and the different seasonal effects on the groundwater. He takes issue with the comment that the roadway will not affect the integrity of the lower ditch. The amount of construction equipment which will be used for the roadway and the houses has a high potential to impact the ditch. The ditch is mounded to a depth of a couple of feet because it does carry that kind of flow, maybe not all the time, but it is that deep for a reason. Gordon Sorenson is the authority on this situation and his recommendations should be taken to heart and applied. There is a cost associated with this type of work. The number of lots has changed as well, but that is part of the development business. One of the reasons the lots are going to be expensive to develop is because there is a switchback in the roadway due to the gradient of the property. That is also part of the process when property is developed, the expense of developing on severe slopes. During all the Lolo Community Council meetings, he has never once heard neighbors say they did not want the ditch piped. That will not make the project perfect by any means, but it is an aspect that ought to be reviewed. The road will only cut off overland flow on a portion of the property. The west side of the property or anything to the west of the curve in the road or above the roadway is going to be directed toward the west and continue to flow downhill toward the rear of the neighbors properties. The idea that the road will capture run-off or overtopping is not true for all of the property. He agreed with Sharon Reed about the access to Nature Drive. Just because this property touches this easement does not give it the right to access the easement. The proximity of the new road off Sapphire Drive will put it in the back yards of the neighbors. It was probably anticipated by the neighbors that development, if it occurred, would be back yard to back yard. It essentially gives the neighbors through lots with roadway frontage on both sides. He also did not agree that the strip of open space should be there either. The open space strip doesn't serve much of a purpose except to create the non-variance condition of through lots. To expect a 5 lot subdivision to create a Homeowners Association to maintain a strip of property is unrealistic and has proven to not work well in other cases. It would be better to find a way so the road did not need a switchback and get it away from the neighbors rear yards. They will not have any enjoyment of their back yards in this type of arrangement. Ron mentioned that the association has a right to beautify the open space and he would recommend that some type of landscape or buffering plan be required to accomplish that. He did not agree that the construction would not have an impact on the ditch. It is not uncommon for lot grading and construction activities to impact beyond the footprint of the proposed dwelling. Having two roadway easements through a single property is not an appropriate way to plan a subdivision.

Colleen Dowdall stated that she was at Planning Board last night where Mr. DiPasquale presented a subdivision he is representing in the same area. She wondered if the Lower Mormon Ditch goes through his proposal as well.

Ray DiPasquale stated the Lower Mormon Ditch does go through that property and there are plans to pipe it.

Colleen Dowdall asked if there was a condition that the ditch not be piped.

Ray DiPasquale stated that Gordon Sorenson's recommendation was followed exactly. The irrigation ditches are in much better shape through his proposal. The groundwater modeling results are very different than on this property.

Colleen Dowdall stated that she recalled that Jackie had said she did not want the ditch piped.

Ray DiPasquale stated there is a portion of the Lower Mormon Ditch that has a dense amount of riparian vegetation on either side of it. That portion of the ditch will be lined so as not to disturb that riparian area and the rest of it will be piped through an open meadow. There is also nothing that will be affected below the ditch. The Maclay-Lolo Ditch is in approximately the same condition on both pieces of property. The Lower Mormon Ditch is in better shape on his proposal, plus a good portion of it is already piped through an open meadow.

Colleen Dowdall stated that if the ditch was piped and the road was moved to the center of the property, it would provide an opportunity for twice as many lots. Does the Lolo Community Council have a position on that?

Ray DiPasquale stated that he did not feel that was a true statement. The road could not be constructed that way, it will have to eventually wind around. He did not see a way to increase the number of lots, certainly not double them.



Colleen Dowdall stated that the Homeowners Association for Ireland Acres will have to be formed to maintain the roadway, because it is private roadway.

Commissioner Carey asked Greg if this was the only road configuration that worked on this piece of property.

Greg Robertson stated the problem is its limited frontage along Sapphire Drive. There are really only two points of connection, either Nature Drive, which doesn't have adequate frontage, or Sapphire Drive. There is fairly good site distance at that particular location. Whether it's appropriate or not is another matter.

Acting Chair Curtiss stated that Nature Drive is private.

Scott Madgwick stated he lived just below the proposed cul-de-sac and the ditch. He presented some photos of work he is doing in his back yard which show clay lenses about three feet down. For 20 years he has called the ditch owner, Larry Kolb, and complained about water in his basement and backyard. He has drain tile around his house and the back of his property and still has a large portion of his property that is thoroughly saturated from water that seeps out of the ditch and overflows. He and another neighbors have observed water coming over the banks of the ditch and down the hill. The ditch has been a big issue ever since he's been there. It needs to be piped or lined or something to take care of the overflow. Stan Hendrickson told him that the upper ditch could actually flow under the lower ditch because of the clay. He did not think that was the problem however, it is the Lower Mormon Ditch that causes the problems. The Maclays have taken good care of their ditch. Every time he uses Nature Drive, he asks Mr. Tucker for permission to use his road. Everyone who uses the road has always asked for permission. The covenants provide a disclaimer against the developers regarding potential flooding due to the irrigation ditches. If he has water in his basement again because of what is happening, he has no recourse other than to sue somebody. He can't take care of it himself. The swales along the road will hold more water than the flat land does right now. His house is directly below the loop in the road and his property has been a wet area ever since he has lived there, generally after opening the ditches. He has called Larry Kolb every year for 20 years about the problem. He is also Chairman of the Shelby Water Board, which received information on two subdivision from the Department of Environmental Quality. DEQ stated that landowners are already at high risk of septic contamination. There are 300 septic fields within a square mile of the Shelby Water District wells which could cause contamination. He did not know if a nutrient loading study had been done for the area, but it should be done. There is a lot more testing that needs to be done before this subdivision is approved, before it is discovered that it is affecting everyone down gradient. He has nothing against development, he just wants to see it done right so it doesn't affect the current residents. If it does affect them, they should have some recourse.

Acting Chair Curtiss stated that mixing zones, approval of septic locations, etc., is approved by the Health Department. Even if the Commissioners approve the subdivision, if it cannot meet Health Department and DEQ regulations, then the subdivision process stops. The Commissioners don't make that decision, it is based on scientific criteria.

Scott Madgwick stated that one neighbor's house sits maybe 30 or 40 yards from where the new road is proposed. They are not present today, but their concern is that their kitchen window will be looking out at a road. He will have a road in his back yard. None of the neighbors really want public easements or access through their property. If there isn't a fence, kids will go from point "A" to point "B" through neighbors back yards.

Scott Laird stated that he is a property owner to the north of this development. This proposal has been in the works for at least a year now. It has become clear to the landowners that about it that this is an unsuitable site for development. Just because it is open and doesn't have houses, doesn't make it right for development. The groundwater to existing wells come right off that hill. Everything flows from south to north, right to the homes that sit on the northern border. He owns a home that abuts the common area. The road will be right along his back fence. Every home that sits along the north boundary is located at the back portion of the lots; their back fence line is close to their homes. This is not a wise plan. If this was suitable property for subdivision, there would be another place to locate the road. This creates a situation where there is a road in front of and at the back of neighboring properties. The Lolo Community Council recommended the Board of County Commissioners deny the subdivision. Ron mentioned that this is a great little project, but everybody who lives there doesn't think it is so great. The disclaimer in the covenants allows the developer to build the project then walk away if there are problems with the ditch and now the County wants to be indemnified too. That makes it seem like there is an issue here.

Cathy Hemmer stated her property is below the common area attached to Nature Drive. She has watched water running from the ditch down through her yard. It looks like a waterfall. The last two years there hasn't been as much water because the snowpack has been down, but normally there is. In the back corner where her property connects with Scott Madgwick's, it is always flooded; water is usually up her ankles. She does not want people walking in the common area to cut across her yard.

Greg Robertson stated that for the area along Ireland Drive, the catch points, where the end of disturbance above the road will occur, is right at or above the ditch. The whole area below the ditch and above Ireland Drive is planned to be excavated to one extent or another. That whole hillside will be opened up. The slope of the road will go all the way to the ditch.

Dave Kottner stated he was the attorney representing Larry Kolb and members of the ditch association. The Maclay Lolo Ditch services four historical ranches that lie to the east and south of this property; owned by the Kolbs, the Maclays, properties on the old Schrader ranch and the Bruce and Mary Maclay Ranch at the end of the ditch. It is maintained by an informal association of those four ranches. The Lower Mormon Ditch has a first right water right that services Larry Kolb and, in emergencies, the Helena Maclay Ranch. Their initial position was that piping the Lower Mormon Ditch would most likely be best for all considerations. The concerns of the ranch owners is making certain that if there are fences that run north to south they do not interfere with maintenance; that easements for maintenance are big enough; and making sure that nothing in the development phase will impact the rights of the water users. When this was originally proposed for more lots, he wrote a letter with regard to those issues and proposed that the ditch be piped as it went through the subdivision. When the plan was changed to a five lot subdivision, they attempted to accommodate Mr. Ireland and expressed that they were not as concerned about piping it; there will still be a need for a culvert and some significant



changes to the covenants because they are not accurate in terms of representations that are being made to potential buyers. The property has no rights to the Lower Mormon water and limited rights to the Lolo-Maclay water, which will probably be waived on this property. There are several matters that need to be addressed with the developer. The County should decide if this needs to be piped or not. If it is piped, then there are certain concerns with regard to the covenants that need to be addressed. Who will be responsible for clearing the grate; they have proposed to Mr. Ireland that be done by the Homeowners Association. They have also proposed that the easement on both sides be larger than proposed. It is currently 10 feet on both sides of the centerline of the ditch. They would like it to be 15 feet, which allows for equipment to get in and be more mobile. If it is not piped, then there are concerns about fences. If fences run north/south, there needs to be an unimpeded gating mechanism that allow machinery through the area to provide maintenance. When they know whether it will be piped or not, it will dictate what needs to be addressed in the covenants. It is true that the Lower Mormon Ditch leaks. It is a long, old ditch, first dug in the late 1800's. It is routinely maintained and the ditch loss is somewhat significant. A hydrology study has not been done to see if the water is coming from the Lower Mormon Ditch or the Maclay Lolo Ditch, but that is not relevant to what is being considered today. The covenants as presented are not yet accurate. Guidance from the Commissioners is needed as to whether or not the Lower Mormon Ditch will be piped.

Acting Chair Curtiss asked if the ditch is piped, is a larger easement still required?

Dave Kottner stated the larger easement will keep anything from being built on top of the ditch pipe and to provide maintenance.

Acting Chair Curtiss stated that many people testified they have contacted Mr. Kolb about the ditch leaking and causing flooding. Are there any plans to take care of the ditch leaking.

Dave Kottner stated that Mr. Kolb did a development called Bitterroot Meadows and for various reasons piped the Lower Mormon Ditch as it passed through that subdivision. It is impractical to pipe this entire ditch. He understands that the problem with lining a ditch has to do more with maintenance; equipment may impact the lining, so piping is the best solution. However, to pipe or line the ditch from Bitterroot Meadows to Mormon Creek would be cost prohibitive and nothing is currently planned.

Ron Ewart stated that Bitterroot Meadows has many quarter-acre lots. When this project was first planned they looked at half-acre to quarter-acre lots. At that time, piping the ditch made economic sense; with only five lots, it does not. There has been a problem for quite awhile with the Lower Mormon Ditch and he wondered why people haven't joined together to pipe it, instead of waiting until somebody else comes along and have them do it. There will be strict DEQ and Health Department review of the project for drainage and sewer and water. The wells of the Shelby Addition are located quite a distance to the northwest of the proposal. The overall drainage follows Lolo Creek toward the Bitterroot River. The wells are out of the influence zone and in the opposite direction of the mixing zones of the proposed drainfields. Testimony has been there is a lot of water in this ditch, but there is only an 18 inch culvert under Nature Drive. He could understand that water could come down Nature Drive, there used to be a creek in that area. He could also see where water could come off Nature Drive to the northwest corner of the property. The lowest point of this property is at the southwest corner of Mr. Madgwick's property. Water on Mr. Madgwick's property is not from this property, it is from off-site along Nature Drive. The old creek showed that it went right through the properties on the north. The road will be to the rear of the adjoining properties, not through their back yards. With only five homes, the road will have limited use. Fences and landscaping can be used as a buffer. The common area will be well landscaped. It is safer to walk down the middle of Nature Drive than to walk to Sapphire Drive to Mormon Creek Road then back down Kimwood just to visit someone practically next door. He did not believe there would be that much use of the walking path. Homeowners Associations can work well and do a good job with landscaping.

Acting Chair Curtiss asked if landscaping was addressed in the proposal.

Ron Ewart stated the plan says the Homeowners Association can plat trees and shrubs if they want to, but it is optional. He felt they would want to landscape. Because of the slope, the homes would be looking into the backyards of the adjoining property. The existing trees in the aerial photos will not be affected by this subdivision, they are off-site.

Sharon Reed stated she did not know what Mr. Ewart was referring to about drainage off Nature Drive. Where Nature Drive abuts this property is probably the driest area on her property. The only place with riparian vegetation is on the other side of the property and is a result of Mr. Kolb's ditch which runs through her property too. She did not believe there was a stream through the area.

Acting Chair Curtiss stated that Kathy Hummer said that area was always so wet that she could not mow.

Sharon Reed stated that Kathy Hummer was referring to where her property adjoined Scott Madgwick's.

Scott Madgwick stated he spoke with Mr. Tucker, who is 85 years old and had a hand in building some of the roads in the area many years ago. He said there has never been a stream in this area. He disagreed with Mr. Ewart about the amount of water in the ditch, he had seen it full to the brim and overflowing many times. The ditch is poorly maintained and any maintenance is usually done by a neighbor who is having problems, not by the ditch owner.

Ron Ewart stated that if the developer is required to pipe the ditch, they may have to revise the proposal to include more lots. This is an expensive piece of property. He wants to do a good development, but it must work financially as well.

There were no further public comments.

Commissioner Carey asked about the ditch easements and Mr. Kottner's request for 15 feet from the centerline on both sides.

Liz Mullins stated that would result in a 30 ditch easement. Subdivision Regulations only require 20 feet or what is required by the appropriate agencies.

Greg Robertson stated that the road design as submitted will cause excavation into the ditch. One of two things need to happen, either raise the grade of the road or do something to lessen the impact to the ditch, such as curbing. A standard 20 or 24 foot wide road typically impacts all 60 feet of the right-of-way.

Commissioner Carey asked about the possibility of stopping the walkway through the common area before it reaches Nature Drive.

Liz Mullins stated the idea behind the common area is to provide a buffer between this subdivision and the Shelby Addition. It was proposed along the entire northern boundary of the subdivision, with the idea of connecting to Nature Drive. If evidence is not provided of legal access onto Nature Drive, then another condition requires that plans for a new path within the common area be submitted. OPG would be looking for a pedestrian pathway only along Ireland Drive which does not connect to the western edge of the property.

Acting Chair Curtiss asked counsel about the possibility of legal access to Nature Drive.

Colleen Dowdall stated she did believe that this parcel has access to Nature Drive, but she has not found evidence that anyone has legal access on Nature Drive. The easements appear to exist on Certificates of Survey with no created easements. She would prefer to not create the opportunity for trespass onto Nature Drive and not continue the walkway all the way to the western boundary. It makes good sense from a planning perspective to connect the two roads with a pedestrian walkway, but if pedestrians don't have a legal right to walk on the roadway, she would just as soon the opportunity does not exist. Another subdivision in this same area that was heard at Planning Board last night is putting in a walkway on Nature Drive. She did not know which side of the road that walkway would be on. It is being done pursuant to their perceived right to use Nature Drive.

Acting Chair Curtiss asked if the common area could be retained as a buffer.

Colleen Dowdall stated that could be done. Many times a walkway easement is in a common area because of the difficulty of creating any other kind of walkway easement. There is no problem with having the walkway in the common area but it would make more sense to have the walkway just go along Ireland Drive.

Acting Chair Curtiss asked if Condition 5 could be deleted as the pathway is referred to in Condition 6.

Colleen Dowdall stated Condition 6 is intended to create the pathway. Condition 5 says that if legal access can be established, then the easement shall connect with Nature Drive.

Liz Mullins stated Condition 5 was included in case legal access can be proved.

Colleen Dowdall stated that she was satisfied that there is no legal access.

Acting Chair Curtiss stated that there was a concern about trespassing and asked if the property should be fenced.

Colleen Dowdall stated that would be requiring that the developer put in a fence the entire length of the property. Controlling that into the future would not be within the power of the County. This would need to be left to the neighbors, letting children know that trespassing will not be allowed. That would be the most effective means to control the situation. It is not up to the County to take action to prevent that.

Acting Chair Curtiss asked Mr. Kottner that if the subdivision is approved with the requirement that the Lower Mormon Ditch be enclosed in a pipe, what else would be required in the covenants.

Dave Kottner stated that Ron suggested the easiest way to deal with the covenants would be to add a condition that the covenants be approved by the ditch owners before being finalized. That would be the easiest way to handle the matter. The covenants were borrowed from another subdivision and there are parts that are not applicable to this subdivision. The condition as Ron suggested would be acceptable, that the covenants be amended and approved by the owners of the ditch associations prior to recording. These owners would include the four ranches attached to the Maclay Lolo Ditch and the Kolbs and the Maclays that are attached to the Lower Mormon Ditch.

Colleen Dowdall stated earlier that she is satisfied that this subdivision does not have legal access to Nature Drive, but she reminded the Commissioners of other situations where several Certificates of Survey were filed showing easements on them. What is now called Nature Drive is one of those easements. She does not know by what right other people use Nature Drive. These road easements have not gone away and they access all different kinds of parcels at different angles, sometime making no sense at all. She did not want to extend her opinion to other rights-of-way or any other documents that might exist about Nature Drive.

Commissioner Carey asked if the recommendation was to delete Condition 5.

Acting Chair Curtiss stated that the condition says that if it can be established that legal access exists, then the pedestrian easement shall connect with Nature Drive.

Colleen Dowdall stated that it does not hurt to leave the condition in. It is approval of the plans for a connection if legal access can be established. If it cannot be established, then another plan will have to be approved.

Acting Chair Curtiss stated that was similar to Condition 9 regarding establishing the existence of water rights. It would be best to keep the condition although it is known that the rights do not exist.

Liz Mullins stated the condition also refers to the irrigation ditch easement to the common area and amending the covenants. She felt it was important that the condition remain, although they know there are no water rights.

Colleen Dowdall stated that if Condition 8 is retained to require enclosing the ditch, then a new Condition 14 needs to be added and the remaining conditions will need to be renumbered.

Acting Chair Curtiss asked if the ditch easements could be addressed in the covenant changes.

Colleen Dowdall stated that would have to be addressed somewhere else. A 30 foot ditch easement is huge. It is much larger than what is normally required. She was not sure if there was something special about this ditch that requires the additional easement. If the additional easement is granted, findings will need to be made to support the additional width.

Commissioner Carey moved that the Board of County Commissioners add a new Condition 14 and renumber the remaining conditions; the new condition will read: "The covenants shall be amended and approved by the owners of the water rights that are serviced by the Lower Mormon Ditch and the Maclay Lolo Ditch."

Dave Kottner stated there is currently no formal association, but there may be one shortly, it is currently is negotiations.

Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey stated he was in favor of keeping Condition 8, he hoped having the ditch in a pipe would make a difference to the folks north of this subdivision.

Acting Chair Curtiss stated the common area will still exist as a buffer and the pedestrian pathway will not connect to Nature Drive.

Liz Mullins stated the pedestrian pathway will run along Ireland Drive out to Sapphire Drive and will be contained within the common area.

Commissioner Carey stated that there is a misperception that County Commissioners can approve or deny a subdivision based on whether they like it or not. That is not the case. The Legislature makes the laws and the Board must act according to those laws. The Legislature does not give counties a lot of tools to deal with subdivisions. If a developer follows the laws, then the Board approves the subdivision. In this case, the developer has tried to mitigate the concerns of the neighbors.

Acting Chair Curtiss stated that she understands the concerns expressed today. The requirement to enclose that portion of the ditch within a pipe may be a financial burden, but it will make for a better subdivision and is more appropriate than putting fences around it. In the long run, this subdivision will improve conditions for everyone in the area.

Elmer Palmer, Lolo Community Council, stated that if this subdivision is approved and then the developer decides they will need to increase the number of lots, will it go back through the full review process.

Acting Chair Curtiss stated that is correct. The approval today is for five lots and enclosing the ditch in a pipe, as well as all the other conditions required.

Elmer Palmer stated that any changes to this plan has to go back through the full subdivision review process, including neighborhood meetings and agency review, Planning Board and Board of County Commissioners.

Acting Chair Curtiss stated that was correct.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(I) of the Missoula County Subdivision Regulations to vary from the required 24 foot road width to the proposed 20 foot road width for Ireland Drive, based on the findings of fact in the staff report. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Article 3-3(1)(D)(ii) of the Missoula County Subdivision Regulations to vary from the requirement that lots not be divided by a road easement, based on the findings of fact in the staff report. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey moved that the Board of County Commissioners approve the Ireland Acres Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report as amended. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

#### **Ireland Acres Subdivision Conditions of Approval:**

##### **Roads and Driveways**

1. The RSID/SID waiver statement on the face of the plat shall be amended to specify that it applies to Sapphire Drive. *Subdivision Regulations Section 3-2(3)(F) and OPG recommendation.*
2. The cul-de-sac right-of-way radius bulb shall be widened to a minimum width of fifty feet. Plans for the cul-de-sac improvements shall be subject to review and approval by Missoula Rural Fire District and Missoula County Public Works Department prior to final plat approval. *Subdivision Regulations Article 3-2(11)(A) and Public Works recommendation.*
3. The covenants shall be revised to state that the roadway accessing Lots 1-5 and all driveways in excess of 150 feet in length shall have an approved turnaround and a minimum unobstructed width of not less than 20 feet and unobstructed vertical clearance of 13 feet 6 inches, subject to review and approval by the Missoula Rural Fire District, prior to final plat approval. *Subdivision Regulations Article 3-2(10) and Missoula Rural Fire District recommendation.*

4. The 60 foot private roadway easement shown on Tract 4B of COS 1626 shall be shown on the plat unless evidence is provided of the easement abandonment or a title policy is provided indicating that the easement is not encumbering the property. *Subdivision Regulations Article 5-1(4)(J) and OPG recommendation.*

#### **Pedestrian Facilities**

5. A pedestrian easement shall be provided within the common area. The easement shall connect with Nature Drive if it is established that this tract benefits from the Nature Drive private easement. Evidence of the scope of the easement is subject to the review and approval of the County Attorney's Office. *Subdivision Regulations Article 3-2(8) and OPG recommendation.*
6. Plans for a 5 foot walkway shall be subject to review and approval by Missoula County Public Works and OPG prior to final plat approval. *Subdivision Regulations Article 3-2(8) and OPG recommendation.*

#### **Fire**

7. Final plans for water supply for fire protection purposes shall be reviewed and approved by the Missoula Rural Fire District, Missoula County Public Works Department and OPG prior to final plat approval. *Subdivision Regulations Article 3-7(1) and Missoula Rural Fire District recommendation.*

#### **Irrigation Ditch**

8. Lower Mormon Ditch shall be enclosed within a pipe, subject to review and approval by Missoula County Public Works and ditch owners prior to final plat approval. *Subdivision Regulations Article 3-1(2) and Floodplain Administrator recommendation.*
9. Evidence of water rights to the ditch shall be provided prior to final plat approval. If there are no water rights, the irrigation ditch easement to the common area shall be removed from the plat and the covenants shall be amended. *MCA 76-3-504(j) and OPG recommendation.*
10. Plans for pre- and post-construction of homes shall be prepared by a registered professional engineer or licensed architect to certify that construction techniques are utilized to prevent structural damage due to potential flooding associated with the irrigation ditches, subject to review and approval by Floodplain Administrator prior to final plat approval. *Subdivision Regulations Article 3-1(2) and Floodplain Administrator recommendation.*
11. The design engineer and the developers shall indemnify, hold harmless and defend Missoula County, its agents and employees from any loss, cost or claim that may arise out of the County's approval of this subdivision based upon certification from a licensed engineer that appropriate construction techniques will prevent structural damages from potential flooding associated with the irrigation ditches. The indemnity shall be filed with the final plat. The indemnity shall be reviewed and approved by the County Attorney's Office prior to final plat approval. *Subdivision Regulations Article 3-1(2) and Floodplain Administrator recommendation.*
12. The engineer shall provide evidence of coverage by errors and omissions insurance prior to final plat approval. *Subdivision Regulations Article 3-1(2) and Floodplain Administrator recommendation.*
13. The area prone to saturation in the northwest corner shall be designated as a No Build Zone subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-1(2) and OPG recommendation.*
14. The covenants shall be amended and approved by the owners of the water rights that are serviced by the Lower Mormon Ditch and the Maclay Lolo Ditch.

#### **Wildlife**

15. The covenants shall be revised as follows:

- Add to the end of the Pets section: "When feeding pets, do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home."
- If livestock are allowed, add a "Livestock" section that says, in part: "Livestock feed should be stored indoors or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, etc. When feeding livestock, do not leave food out overnight."
- Add to Section I.19.d (Wildlife): "Under current State law, it is illegal for dogs to chase hooved game animals. The owner of the dog may be held personally responsible. (MCA 87-3-124)."
- Add new Section I.19.f (Wildlife): "Do not feed wildlife or offer supplements (such as salt blocks), attractants or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against State law (MCA 87-3-130) to provide supplemental feed attractants if it results in a concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety. Deer might occasionally attract mountain lions to the area."
- Add new Section I.19.g (Wildlife): "Compost piles can attract skunks and bears and should be avoided in this subdivision. If used, they should be kept indoors or built to be wildlife-resistant."
- Add new Section I.19.h (Wildlife): "Birdseed is an attractant to bears. Do not use them in this area between the months of April and October. If used, bird feeders must: a) be suspended a minimum of 20 feet above ground level; b) be at least 4 feet from any support poles or points; and c) be designed with a catch plat located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds."

The revised language shall be reviewed and approved by OPG prior to final plat approval. *Subdivision Regulations Article 4-1(12) and Fish, Wildlife and Parks recommendation.*

**Weeds**

16. A Revegetation Plan shall be reviewed and approved by the Missoula County Weed District prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*

**Health**

17. The Covenants shall advise property owners that EPA has designated Missoula County as a zone having a high radon potential and that all new construction incorporate passive radon mitigation systems. *Subdivision Regulations Article 3-1(2) and City-County Health Department recommendation.*

**Easements**

18. A 5 foot utility easement on either side of each property line running north to south between Lots 2 and 3 and between Lots 4 and 5 to accommodate a one inch gas main to provide service to each lot shall be delineated on the plat. The length of each main will be determined when the road is to rough grade, subject to review and approval by NorthWestern Energy, prior to final plat approval. *Subdivision Regulations Article 3-6 and NorthWestern Energy recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 4:00 p.m.

**THURSDAY, APRIL 8, 2004**

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

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated April 8, 2004, with a grand total of \$562.96. The Claims List was returned to the Accounting Department.

**ADMINISTRATIVE MEETING**

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

Resolution No. 2004-048 – The Commissioners signed Resolution No. 2004-048, dated April 8, 2004, a Resolution to rezone property described as a portion of Lot 1 of “Green Acres, Phase 2,” located in the NW¼ of Section 6, T 13 N, R 19 W; also, a portion of reserve parcel B of COS No. 5176, located in the NE¼ of Section 1, T 13 N, R 20 W, PMM, Missoula County, Montana, from C-RR3 (Residential – 4 dwelling units per acre) and “Canyon Creek Village PUD” to “Canyon East Special Zoning District” (mixed-use). This property is located near the corner of Expressway and Wheeler Drive.

Resolution No. 2004-049 – The Commissioners signed Resolution No. 2004-049, dated April 8, 2004, a Resolution to rezone property described as a tract of land being a portion of Lot 2 and all of Lot 3 of “Green Acres, Phase 2,” located in the NW¼ of Section 6, T 13 N, R 19 W, PMM, Missoula County, Montana, from C-RR3 (Residential – 4 dwelling units per acre) to “Windsor Park Special Zoning District” (residential). This property is located east of Storehouse Way, north of Wheeler Drive.

Resolutions– Per agreement with the Homeowners Association, Acting Chairman Curtiss signed three (3) Resolutions stating the intention to create three (3) Rural Special Improvement Districts (“RSIDs”) relating to the design, engineering and construction of paved roadways in the Meadows West area, as follows:

- 1) Resolution No. 2004-050 – Intent to create RSID No. 8481, for roadways known as George Cates Road, Equestrian Way, Lee’s Lane, and No Name Road, for total estimated costs of \$427,000;
- 2) Resolution No. 2004-051 – Intent to create RSID No. 8482, for roadways in a portion of Fire Bucket Loop, Jar’s Gang and Peak’s Row, for total estimated costs of \$835,000; and
- 3) Resolution No. 2004-052 – Intent to create RSID No. 8483, for roadways in O’Keefe Creek Boulevard, connecting a portion of Fire Bucket Loop, and O’Keefe North, for total estimated costs of \$714,000.

All other terms and conditions are set forth therein. County Clerk and Recorder Vickie M. Zeier signed Certificates as to Resolution and Adopting Vote for all three Resolutions.

Board Appointments – The Commissioners approved and signed three (3) letters, dated April 9, 2004, reflecting the reappointments to three-year terms as members of the Big Sky Stewardship Committee to 1) Dawn L. Matulevich-Kato; 2) Kim T. Ashwell; and 3) Natalie Harrington, all from Missoula. Their new terms will run through March 24, 2007.

Board Appointments – The Commissioners approved and signed two (2) letters, dated April 9, 2004, reflecting the reappointments to two-year terms as members of the Local Emergency Planning Committee to 1) Dan Corti; and 2) Chuck Gibson, both from Missoula. Their new terms will run through January of 2006.

Other items included:

- 1) A discussion was held regarding the recruitment of Attorney positions for vacancies in the Public Defenders’ Office.

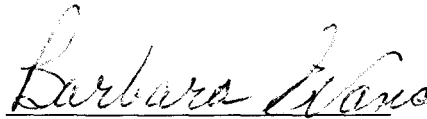
The minutes of the Administrative Meeting are on file in the Commissioners Office.

## FRIDAY, APRIL 9, 2004

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

  
Vickie M. Zeier

Clerk & Recorder

  
Barbara Evans, Chairman

Board of County Commissioners

## MONDAY, APRIL 12, 2004

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was on vacation April 12<sup>th</sup> and 13<sup>th</sup>.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated April 7, 2004, with a grand total of \$21,810.08. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtis signed three (3) Claims Lists, dated April 8, 2004, with the following grand totals:

- 1) \$21,661.81;
- 2) \$1,404.31; and
- 3) \$5,978.26.

The Claims Lists were returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated April 9, 2004, with a grand total of \$18,464.59. The Claims List was returned to the Accounting Department.

Replacement Warrant – Acting Chairman Curtiss examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming William Boggs, Missoula, as applicant for Accounting Warrant #37074, issued March 15, 2004 on the Missoula County #2180 Fund in the amount of \$3,507.36 (payment for service), which was not received in the mail. No bond of indemnity is required.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Michael McMeekin, for the month ending March 31, 2004.

Phasing Plan Amendment – Per recommendation of the Office of Planning and Grants at their Planning Status meeting on April 12, 2004, the Commissioners approved and signed a letter dated April 12, 2004 to Craig Wickham, Territorial Engineering and Surveying, Inc., approving his request for an amendment of the Canyon East Subdivision phasing plan. The amended plan will minimize construction traffic through completed sections.

Signature Page – The Commissioners reviewed and signed one (1) Larchmont Claims Signature Page for the week dated April 9, 2004, in the amount of \$57,039.79. The Signature Page was returned to the County Auditor.

Agreement – Acting Chairman Curtiss signed a Memorandum of Agreement, dated November 26, 2003, between the Missoula County Park Board (the "Board") and Seeley-Swan High School – Seeley Swan Student Government for assistance with park development. The Board agrees to provide up to \$3,000 in matching funds from the Capital Matching Fund Program (Fall FY04), and must be spent by November 25, 2005. The document was returned to Lisa Moisey, County Parks Coordinator, for further handling.

Agreement – Acting Chairman Curtiss signed a Memorandum of Agreement, dated November 26, 2003, between the Missoula County Park Board (the "Board") and the Lolo Area Community Organization for assistance with park development. The Board agrees to provide up to \$1,500 in matching funds from the Capital Matching Fund Program (Fall FY04), and must be spent by November 25, 2005. The document was returned to Lisa Moisey, County Parks Coordinator, for further handling.

## TUESDAY, APRIL 13, 2004

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

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated April 13, 2004, with a grand total of \$15,072.41. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Agreement – The Commissioners signed a Satisfaction of Sanitary Sewer Grant Program Agreement for Property Owners, dated April 13, 2004, with Leslie E. and Virginia M. Blouin, 452 Colorado Avenue, declaring fees fully paid, satisfied and discharged. The original agreement dated August 22, 2003, and recorded in Book 716, at Page 2, is part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District.

Resolution No. 2004-054 – The Commissioners signed Resolution No. 2004-054, dated April 13, 2004, a resolution to submit to qualified electors by mail ballot on July 6, 2004 the question of whether or not to create the Liberty Cove

Water and Sewer District. The election for the Board of Directors (three directors) will be presented on the same ballot; the filing deadline for candidates will be April 23, 2004.

Contract – The Commissioners signed a Contract for Materials Supply and Delivery between Missoula County and Permapost Products for the production and supply of glu-lam deck panels and associated hardware for the Van Buren Street Bridge. The total amount shall not exceed \$51,064.22. The work shall be substantially completed by June 15, 2004. All other terms and conditions are set forth therein.

Agreement – Acting Chairman Curtiss signed a Health Care for the Homeless Sub-Recipient Agreement between the Yellowstone City-County Health Department and the Missoula City-County Health Department (“Sub-Recipient”) to set forth the objectives, understandings, and agreements in connection with the award of Section 330 of the Public Health Service Act grant funds (administered by Partnership Health Center). The total amount shall not exceed \$212,500.00. The term will be April 1, 2004 through March 31, 2005. All other terms and conditions are set forth therein. The document was returned to Terry Delgadillo at PHC for further handling.

Request for Action – The Commissioners approved a request from Don and Karen Luke to allow for an extension of their lease, which expired in March of 2004, for County Property occupied by the Missoula Batting Cages at Fort Missoula, which they are trying to sell. At their meeting on April 8, 2004, the Missoula County Park Board approved a six-month extension to allow enough time for the sale of the business. The document was returned to Lisa Moisey, County Parks Coordinator.

Request for Action – Acting Chairman Curtiss signed the signature page and retro-actively approved (Form was signed April 1, 2004) the submission of the FFY03/War Supplemental WMD grant application which would provide about \$700,000 for a variety of equipment for local response agencies to increase our preparedness for a WMD incident. Among other things it provides over \$380,000 for the County’s communications backbone project. The document was returned to Jane Ellis in Emergency Services.

Request for Action – Acting Chairman Curtiss signed the cover sheet for the Missoula County/WMMHC (Western Montana Mental Health Center) and Turning Point’s Annual Progress Report to HUD for the transitional housing program for individuals who are homeless and chemically dependent and/or dually diagnosed with mental illness. The County will receive \$196,665 in grant money for a one-year contract for this project. The documents were returned to Kristina Swanson in the Office of Planning and Grants for further handling.

Grant Award – Commissioner Curtiss signed acceptance documents relating to a State of Montana Board of Crime Control Grant Award (#02-A03-81657) for the Public Defender’s Expedited Disposition Project, in the amount of \$23,025.84. The term of the award is April 2, 2004 through June 30, 2005. The documents were returned to Margaret Borg in the Public Defender’s Office for further handling.

Other items included:

- 1) The Commissioners approved the FY2005 Proposed Budget Parameters as presented.
- 2) Jane Ellis of Emergency Services gave an update to the Commissioners on the Point 118 Site.
- 3) The Commissioners reviewed and CAO Ann Mary Dussault signed a letter, dated April 14, 2004, to William Hitch and Kathleen Marshall of the Turah RV Park, Missoula, regarding their application for “Tax Exemption and Reduction for the Remodeling, Reconstruction or Expansion of Existing Commercial Buildings or Structures,” in which several items were requested prior to proceeding to a public hearing on the request.

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

#### WEDNESDAY, APRIL 14, 2004

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans attended a Pre-Retirement Seminar held at the Grant Creek Inn April 14<sup>th</sup> and 15<sup>th</sup>.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated April 13, 2004, with a grand total of \$10,056.98. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated April 14, 2004, with a grand total of \$38,706.73. The Claims List was returned to the Accounting Department.

Agreements – The Commissioners signed two (2) Sanitary Sewer Grant Program Agreements for Partial Assistance to Owner-Occupied Households Secured by Real Property, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. The Agreements provide funds for sewer improvements and connection to the City of Missoula municipal sewer system, as follows:

- 1) Agreement dated April 12, 2004, with Leslie E. and Virginia M. Blouin, 452 Colorado Avenue; and
- 2) Agreement, dated April 12, 2004, with Stephen and Zoltan Balogh, 208 Sommers Street.

All sewer development fees and on-site connection costs and fees are as set forth therein.

#### PUBLIC MEETING – April 14, 2004

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Jean Curtiss. Also present were Commissioner Bill Carey, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall and County Public Works Director Greg Robertson. Commissioner Barbara Evans was attending a seminar.



Pledge of AllegiancePublic Comment

None

Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$303,755.37. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Conditions of Approval, Variances and Findings of Fact: Carlton Heights-Maple Creek Addition #2 (Alternate 3) – Postponed from March 24, 2004 – Postponed to April 21, 2004

Acting Chair Curtiss announced that this item had been postponed to April 21, 2004.

Bid Award (Missoula County Fair): Ice Rink Addition – Postponed from April 7, 2004 – Postponed to April 21, 2004

Acting Chair Curtiss announced that this item had been postponed April 21, 2004.

Consideration: Wipplinger Addition (2 lots on 9.79 acres) – Sorrell Springs area (2.5 miles northwest of Frenchtown)

Tim Worley, Office of Planning and Grants, presented the staff report.

Gary and Brenda Wipplinger, represented by Brenda Rankin of Territorial Engineering and Surveying, Inc., are proposing Wipplinger Addition, a two lot summary subdivision of 9.79 acres into one 4.88 acre lot (Lot 7A) and one 4.91 acre lot (Lot 7B). The subject property is part of the Sorrel Springs residential development, which originally consisted of 62 lots on 685 acres. Access to the lots is via Mustang Lane. A community water system maintained by the Homeowners Association and individual septic systems will serve both lots.

The property is unzoned. The Comprehensive Plan recommends a density in this area of one dwelling unit per ten acres. The density of this development is one dwelling unit per 4.9 acres, which does exceed the Comprehensive Plan's recommended density. The proposal does meet other Comprehensive Plan goals, including retention of the general rural character and development in an area with existing infrastructure.

The subdivision is located on Mustang Lane, a private road within Sorrel Springs. This is an off-site road located one mile from the nearest County maintained paved road. As a result, Mustang Lane is not required to be paved. However, it is 21 feet in width, 3 feet less than the 24 foot standard in the regulations, therefore the applicant has requested a variance. Staff is recommending approval of the variance request. Meeting the surface width requirement in this location would involve excessive impact to the landscape with little overall improvement and the road does not serve many more homes beyond this location.

A portion of the driveway will be shared so staff has recommended a condition for a shared maintenance agreement. The driveway on Lot 7B is over 1,000 feet long. Scott Waldron of Frenchtown Rural Fire District reviewed the proposal and the proposed turnaround on Lot 7B, which does meet with his approval.

Another variance from the walkway requirement on private roads has been requested. Staff recommends approval of the variance because the regulations (Article 3-2(8)(A)(iv) speaks to making connections to bus stops and adjacent neighborhoods. The nearest bus stop is a mile away and there is not much promise for a comprehensive walkway network in this area.

Fire safety is an important item for the subdivision. A fire hydrant is located within 0.4 miles of the site and Scott Waldron reviewed the proposal both on paper and on-site. He felt having the hydrant within 0.4 miles was an adequate means of supply water for fire protection purposes. There is one condition related to fire safety that the applicants obtain a fire safety permit from the Frenchtown Rural Fire District.

The lots will be served by individual septic systems. The Sorrel Springs community water system is available at this location; a water line runs in front of the property. A small portion of property exceeds a 25% slope and no building is proposed near this area of excessive slope. Bill Otten has recommended fairly routine weed control measures on the site and staff has passed his recommendations along as a condition of approval. The Health Department has passed along their recommendations for typical radon mitigation information to be supplied. In conclusion, staff recommends approval of the Wipplinger Addition Subdivision.

Brenda Rankin, Territorial Engineering & Surveying, developer's representative, stated the conditions are very routine, standard and reasonable and the client has no issues with any of them. She thanked Tim for his work on the proposal and making the process easy.

Acting Chair Curtiss asked for public comments. There were none.

Acting Chair Curtiss disclosed for the record that she knows Mr. Wipplinger personally, he works for the same company as her husband. Neither one supervises the other and she has no financial interest in the project. The County Attorney's Office has concluded that there is no conflict of interest.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Article 3-2(1)(I) of the Missoula County Subdivision Regulations requiring a 24 foot surface width for Mustang Lane, based on the findings of fact in the staff report. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Article 3-2(8)(A)(iv) of the Missoula County Subdivision Regulations requiring pedestrian connections for all rural subdivision on private roads outside the Urban Growth Area, based on the findings of fact in the staff report. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey moved that the Board of County Commissioners approve the Wipplinger Addition Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

#### **Wipplinger Addition Subdivision Conditions of Approval:**

##### **Shared Driveway**

1. A maintenance agreement for the shared private driveway entrance shall be reviewed and approved by the County Attorney's Office and filed with the final plat. *Subdivision Regulations Article 3-2(1)(I)(iii) and OPG recommendation.*

##### **Fire**

2. A covenant 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 term: Prior to occupying the dwelling constructed on Lot 7B within Wipplinger Addition, the developer or purchasers of the lot shall obtain a Fire Safety Permit from the Frenchtown Rural Fire District. *Subdivision Regulations Article 3-1(1)(B), 3-1(1)(F) and Frenchtown Rural Fire District recommendation.*

##### **Weeds**

3. The subdivider shall file a development covenant requiring lot owners to maintain the property in compliance with the Montana County Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan. The development covenant shall also require revegetation with beneficial species of any areas of ground disturbance created by construction or maintenance. It shall also include a Revegetation Plan for disturbed sites that has been reviewed and approved by the Missoula County Weed Board. The development covenant shall be reviewed and approved for filing by the Missoula County Weed District prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*

##### **Radon**

4. A development covenant shall be filed with the Missoula Clerk and Recorder's Office prior to final plat approval advising the owner of Lot 7B of the Health Department recommendation that all new construction incorporate passive radon mitigation systems. The language of the provision shall be subject to review and approval by OPG prior to final plat approval. *City-County Health Department recommendation.*

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

**THURSDAY, APRIL 15, 2004**

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

Claims Lists – Commissioners Carey and Curtis signed two (2) Claims Lists, dated April 15, 2004, with the following grand totals:

- 1) \$3,248.66; and
- 2) \$12,508.26.

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 four (4) DUI Overtime Contracts to support DUI enforcement within Missoula County. The total amount of each contract is provided by driver's license reinstatement fees imposed on convicted impaired drivers. The term will be April 16, 2004 through June 30, 2005. All other terms and conditions are set forth therein. The contracts are between the Missoula City-County Health Department and the following:

- 1) City of Missoula Police Department, in the amount of up to \$3,000;
- 2) Montana Highway Patrol, in the amount of up to \$3,000;
- 3) Missoula County Sheriff's Department, in the amount of up to \$4,000; and
- 4) University of Montana, Office of Public Safety, in the amount of up to \$2,500.

The documents were returned to the Health Department for further signatures and handling.

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Dr. John Stowers for the provision of health care services as required in the Missoula County Detention Facility. The total amount shall not exceed \$80.00 per hour (and no more than six hours per week unless agreed to by the Facility Administrator or designee). The term will be January 1, 2004 through January 1, 2009. All other terms and conditions are set forth therein.

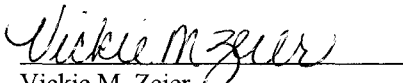
Amendment – The Commissioners signed an Amendment, dated April 15, 2004, to the Memorandum of Agreement between Missoula County and Human Resource Council (“HRC”) (dated July 1, 2003). Amended is the total value of the agreement from \$196,500.00 to \$197,969.97, restoring money back to HRC’s budget to use for more basic needs assistance to social security disability claimants. The duration of the Agreement remains July 1, 2003 through June 30, 2004.

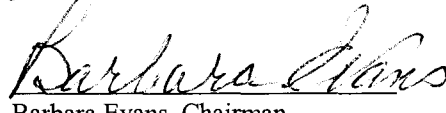
Proclamation – The Commissioners signed a Proclamation declaring the week of April 11-17, 2004 as *National Public Safety Telecommunications Week*, and thanking the telecommunicators in 9-1-1 for all their efforts and hours and hard work under very difficult circumstances. The community is encouraged to recognize the importance of the function of 9-1-1 and to thank these dedicated individuals in writing.

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

**FRIDAY, APRIL 16, 2004**

The Board of County Commissioners did not meet in regular session. Commissioner Carey traveled to Thompson Falls to attend a Mental Health Board Meeting. Commissioner Curtiss participated in a Collaborative Leadership Workshop held at the University of Montana Law School on April 16<sup>th</sup> and 17<sup>th</sup>.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, APRIL 19, 2004**

The Board of County Commissioners met in regular session; all three members were present. The FY’05 Budget Kick-off meeting was held in the forenoon.

Claims List – The Commissioners signed the Claims List, dated April 14, 2004, with a grand total of \$5,891.96. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated April 15, 2004, with the following grand totals:

- 1) \$334,425.73; and
- 2) \$7,537.12.

The Claims Lists were returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated April 16, 2004, with the following grand totals:

- 1) \$12,304.69; and
- 2) \$113,462.95.

The Claims Lists were returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated April 19, 2004, with a grand total of \$2,155.00. The Claims List was returned to the Accounting Department.

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Katherine Zuleger, Clinton, as applicant for Clinton Elementary School District #32, Warrant #14808, issued April 2, 2004 on the Missoula County Clinton Payroll Fund in the amount of \$361.28 (for wages), which was not received in the mail. No bond of indemnity is required.

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Julie Bunton, Alberton, as applicant for Clinton Elementary School District #32, Warrant #14796, issued April 2, 2004 on the Missoula County Clinton Payroll Fund in the amount of \$354.67 (for wages), which was not received in the mail. No bond of indemnity is required.

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Jodi Clark, Alberton, as applicant for Clinton Elementary School District #32, Warrant #14797, issued April 2, 2004 on the Missoula County Clinton Payroll Fund in the amount of \$702.50 (for wages), which was not received in the mail. No bond of indemnity is required.

Extension Request – Per recommendation of the Office of Planning and Grants at their Planning Status meeting on April 19, 2004, the Commissioners approved and signed a letter (dated April 19, 2004) to Ron Ewart, Eli & Associates, Inc., approving his request for a six-month extension of the final plat approval deadline for the Cheleq Court Subdivision. The new deadline will be October 16, 2004.

Shoreline Permit – At their April 19, 2004 Planning Status meeting with the Office of Planning and Grants, the Commissioners approved and Chairman Evans signed an application by Dick Ainsworth to replace an existing dock and swimming platform on Placid Lake. The property is described as Lot D of Beavertail Villa Sites. The document was returned Todd Klietz in the Office of Planning and Grants for further signatures and handling

TUESDAY, APRIL 20, 2004

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

Claims Lists – The Commissioners signed four (4) Claims Lists, dated April 19, 2004, with the following grand totals:

- 1) \$72,201.54;
- 2) \$21,705.76
- 3) \$10,570.94; and
- 4) \$75,345.35.

The Claims Lists were returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated April 20, 2004, with a grand total of \$127,867.01. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

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

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 08 – CY2004 - Pay Date: April 16, 2004. Total Missoula County Payroll: \$898,424.25. The Transmittal Sheet was returned to the Auditor's Office.

Letters – The Commissioners signed two (2) letters, dated, April 19, 2004, to 1) Department of Natural Resources and Conservation ("DNRC"), Helena, Montana; and 2) Montana Department of Commerce, Treasure State Endowment Program ("TSEP"), Helena, Montana, supporting and endorsing the Seeley Lake Sewer District DNRC and TSEP Grant Applications. The funds, if awarded, will allow the Sewer District to continue to address sewer issues in the Seeley Lake community. The letters were returned to Beth Berlin in the Office of Planning and Grants for further handling.

Resolution No. 2004-055 – The Commissioners approved and Chairman Evans signed Resolution No. 2004-055, dated April 20, 2004, an INTERCAP Revolving Program Agreement in the amount of \$158,623.00, representing financing for FY04 equipment purchases at the Western Montana Fair. The term will be April 30, 2004 through August 15, 2007.

Resolution No. 2004-056 – The Commissioners approved and Chairman Evans signed Resolution No. 2004-056, dated April 20, 2004, an INTERCAP Revolving Program Agreement in the amount of \$78,597.00, representing the annual financing for CIP Pool Equipment (motor pool and copier pool purchases.) The term will be April 30, 2004 through August 15, 2007.

Resolution No. 2004-057 – The Commissioners signed Resolution No. 2004-057, dated April 20, 2004, a Budget Amendment for the Western Montana Fair reflecting \$15,944 in INTERCAP Revenues. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Contract – Chairman Evans signed Contract (#04-07-531-009-0) between the Department of Public Health and Human Services and Missoula County for implementation of the ECCS (Early Childhood Comprehensive Systems) planning grant by soliciting and gathering information from twelve focus groups conducted at the community level. The total shall not exceed \$17,753.00. The term will be March 1, 2004 through June 30, 2004. All other terms and conditions are set forth therein. The document was returned to the Health Department for further signatures and handling.

Amendment – Chairman Evans signed Amendment Number One to Contract No. 04-07-3-01-022-0) between the Missoula County and the Montana Department of Public Health and Human Services for the provision of funding for a community-based Obesity Prevention and Education program for Missoula County. The Amendment reflects an additional \$10,000 received for the Obesity grant, and also revises the required services, reports and payment consideration, as set forth therein. The document was returned to the Health Department for further signatures and handling.

Easement – The Commissioners signed a Grant Creek Waterway and Flood Protection Easement, dated March 5, 2004 between Missoula County and Edmund, Hope, E. Dale and Karen L. Denny for an easement to accommodate improvements for the Grant Creek Flood Control and Restoration Project. The property is known as Tract 1B of COS No. 4568, located in the SE¼ of Section 11, T 13 N, R 20 W, PMM. The document was returned to Public Works Director Greg Robertson for further handling.

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Information Discovery Systems, Inc. for the purpose of updating Food Service Inspections and licensing data for the Environmental Health Division. The total amount shall not exceed \$2,280. The contract term ends on June 7, 2004. All other terms and conditions are set forth therein. The document was returned to the Health Department for further signatures and handling.

Extension Request – Per recommendation of the Office of Planning and Grants at their Planning Status meeting on April 20, 2004, the Commissioners approved and signed a letter (dated April 20, 2004) to Ron Ewart, Eli & Associates, Inc., approving his request for a one-year extension of the final plat approval deadline for the Ryan's Lots Subdivision. The new deadline will be April 30, 2005.

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

Tax Abatement Requests – At the Clerk & Recorder's Departmental Meeting with Vickie Zeier, held on April 20, 2004 the Commissioners approved requests and/or letters regarding the following:

- 1) To approve a request from Matthew T. and Jody Quinn, Missoula, to refund taxes paid on Titles #G061437 & #E268049;
- 2) To approve a request from Tina-Marie Reger, Spokane, WA to refund penalty and interest paid for Taxpayer ID #1039209;
- 3) To deny a request from Frankie J. Morrison, Missoula, to refund penalty and interest for 1<sup>st</sup> half 2003 real estate tax bill for Taxpayer ID #6000411;
- 4) To approve a request from Beatriz Bencia, Lolo, to refund taxes paid on Title #M473442;
- 5) To approve a request from Jared S. Heggen, PLLC, Missoula, to refund taxes paid on Title #E810257;
- 6) To deny a request from Tina Mills, Missoula, to refund penalty and interest for 1<sup>st</sup> half 2003 real estate tax bill for Taxpayer ID #2395304;
- 7) To approve a request from Jared S. Heggen, PLLC, Missoula, to refund taxes paid on Title #G123093;
- 8) To deny a request from Ryan Knudson, Ellensburg, WA to refund penalty and interest for 1<sup>st</sup> half 2003 real estate tax bill for Taxpayer ID #1512902; and
- 9) To approve a request from Carol Ford, Kenai, AK to refund penalty and interest paid for Taxpayer ID #0658850.

### WEDNESDAY, APRIL 21, 2004

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

Claims List – The Commissioners signed the Claims List, dated April 20, 2004, with a grand total of \$39,054.64. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated April 21, 2004, with a grand total of \$5,007.36. The Claims List was returned to the Accounting Department.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

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

Proclamation – The Commissioners and Mayor Mike Kadas signed a Proclamation jointly declaring April 22, 2004 as *Carma Gilligan Missoula Volunteer Day*, and inviting all citizens to join in recognizing the value of volunteer work in promoting good citizenship and Carma Gilligan's efforts to promote a better Missoula community.

Resolution No. 2004-058 – The Commissioners signed Resolution No. 2004-058, dated April 21, 2004, a Budget Amendment for the Sheriff's Department reflecting \$35,000 for Reserve and Off-Duty Security. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

#### PUBLIC MEETING – April 21, 2004

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

#### Pledge of Allegiance

#### Public Comment

None

#### Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$892,050.68. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### Bid Award (Missoula County Fair): Ice Rink Addition – Postponed from April 14, 2004 – Postponed to April 28, 2004

Chairman Evans announced that this item had been postponed to April 28, 2004.

#### Hearing (Certificate of Survey): Paige Family Transfer

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for a parcel located in the north one-half of the northeast one-quarter of Section 28, Township 15 North, Range 22 West, west of Road Plat E2.

Patrick K. and Donna M. Paige have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 12 acres in size located near Huson, Montana.

Patrick and Donna propose to create one approximately 5 acre parcel for transfer to their son, Derek K.H. Paige, for residential purposes and keep the remaining approximately seven acre parcel for residential purposes as well.

The history of the parcel is as follows: Donald R. and Helen M. Harrington purchased this tract of land in 1963 from Harvey C. and Edith I. Hackman. The parcel was then deeded to Patrick K. and Donna M. Paige in October, 1993.

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

Chairman Evans opened the public hearing.

Patrick Paige was present and came forward to answer any questions the Board may have.

Chairman Evans stated that the law requires the Board to determine whether or not this is an attempt to evade the subdivision act.

Commissioner Carey asked if Mr. Paige intended to further subdivide the property.

Patrick Paige stated he did not intend to further subdivide.

Commissioner Carey asked if Mr. Paige could ensure the Board that he will, in fact, transfer this property as a gift to his son.

Patrick Paige stated that was correct.

Commissioner Curtiss asked the age of Mr. Paige's son.

Patrick Paige stated his son is 19 years old.

Commissioner Curtiss asked if Mr. Paige had talked to anyone at the County about dividing this property through subdivision review.

Patrick Paige stated he had not spoken to anyone about subdividing.

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

Commissioner Carey moved that the Board of County Commissioners approve the request by Patrick K. and Donna M. Paige to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Mike Sehestedt stated that Mr. Paige would receive a letter confirming today's action. This is just permission to divide the property, it does not give Health Department approval, zoning compliance and no guarantee of access or anything else.

#### Hearing: Proposed Fees for Public Works

Ann Mary Dussault, Chief Administrative Officer, presented the staff report.

A review of activities of the Public Works Department revealed that Missoula County was not charging fees for certain activities in the Department. She and Greg Robertson, Director of Public Works, were charged with developing a fee schedule for BCC review.

A rate of \$34.46 per hour was calculated as follows:

1. Base: Total employee costs less non-productive factor
2. Add: Employee overhead
3. Add: Departmental overhead

NOT factored: Missoula County overhead (e.g., Financial Administration, Human Resources, Information Services, County Attorney)

<b>APPROACH PERMIT AND INSPECTION FEE</b>	<b>\$52.00</b>
Average time spent: 1.5 hours @ \$34.46/hour = \$51.69	
<b>EXCAVATION PERMIT AND INSPECTION FEE</b>	<b>\$65.00</b>
Average time spent: 2 hours @ \$34.46/hour = \$68.92	
<b>GRADING, DRAINAGE AND EROSION CONTROL REVIEW AND INSPECTION FEE</b>	<b>\$65.00</b>
Average time spent: 2 hours @ \$34.46/hour = \$68.92	
<b>SUBDIVISION REVIEW AND INSPECTION FEE</b>	<b>\$195.00</b>
Average time spent: 6 hours @ \$34.46/hour = \$206.76	

The fees could raise approximately \$50,000 in Departmental revenue.

Chairman Evans opened the public hearing.

Greg Robertson stated these are current activities his department conducts. Most of them are not road related, they have to deal with stormwater and associated functions. The increased work load tasked to his department, along with a reduction in staffing, has put a burden on how the department functions. It seems a wise course of action to start charging

appropriate fees for these services rather than cutting into department revenues. These fees are reasonable for the activities and he would request the Commissioners approve and implement them.

Chairman Evans asked if comments had been received from anyone who would be paying these fees.

Greg Robertson stated he had one inquiry from Dick Ainsworth at PCI, but no other comments.

Commissioner Curtiss asked where this was advertised.

Ann Mary Dussault stated it was advertised twice in the newspaper. Also, Greg, Commissioner Carey and herself attended the Association of Realtors meeting to inform them of this action. The request has also been reviewed by both Deputy County Attorney Mike Sehestedt and Deputy County Attorney Colleen Dowdall.

Mike Sehestedt stated these are represented as new fees. The County already does approach permits and asked if a fee is associated with them.

Greg Robertson stated there is no fee for approach permits.

Mike Sehestedt asked about excavation permits.

Greg Robertson stated the fee is \$30 and has remained constant for about 10 years.

Mike Sehestedt stated that currently no fees are charged for the other two items.

Greg Robertson stated that is correct.

Commissioner Curtiss stated that the resolution says it becomes effective on date of passage and approval. Will that cover permits already applied for.

Greg Robertson stated there will be an implementation period. He will notify the firms that they typically do business with and advise them of the new fees.

Mike Sehestedt asked how long the period of notification and implementation would take.

Greg Robertson stated the letters would go out tomorrow and he was looking at an effective date of May 1, 2004.

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

Commissioner Curtiss asked if this will decrease the amount of time plans may sit on someone's desk waiting for review.

Greg Robertson stated it would indeed reduce wait time. They will be able to hire a helper to relieve the burden on other employees and expedite the process.

Commissioner Curtiss moved that the Board of County Commissioners amend the Resolution to have the effective date May 1, 2004. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners adopt the Resolution Setting Fees for the Department of Public Works Plan Review and On-Site Inspections, as amended. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Conditions of Approval, Variances and Findings of Fact: Carlton Heights-Maple Creek Addition #2 (Alternate 3) – Postponed from April 14, 2004 – Postponed to May 26, 2004**

Chairman Evans announced that this item had been postponed to May 26, 2004.

**Hearing: Nature View Estates (8 lots on 11 acres) – in Lolo off Nature Drive**

Liz Mullins, Office of Planning and Grants, presented the staff report.

Jeff and Kori Hollenback, represented by Ray DiPasquale of PCI, Inc., are proposing to subdivide an 11 acre parcel into 8 one acre lots with a 1.9 acre common area. The property is located south of Kimwood Drive off Nature Drive in Lolo. The property has an historic farmhouse built in the late 1800's and associated farm structures such as barns, corrals and fenced pastures. There is also a small guest house that is currently rented. Because Lot 1 will contain the farmhouse and guest house, the applicant is also requesting approval of a Subdivision for Lease or Rent.

The property is unzoned. The 2002 Lolo Regional Plan recommends Residential uses at two dwelling units per acre. The proposed density is approximately 1 dwelling unit per 1.23 acres.

The park area requirement for the subdivision is 0.46 acres (5% of the net lotted area of 9.19 acres). The applicant has proposed to dedicate 1.9 acres of common area. There is a 25 foot wide access easement along the western border of Lot 3 to the park area. The applicant states that the common area will remain as natural open space and is intended to mainly serve as a buffer between the existing houses in Shelby Addition and Nature View Estates.

The property has sloping topography that ranges from approximately 5% to over 25% slope. Slopes greater than 25% are designated as No Build Zones. There are two irrigation ditches that run from north to south through the property. The majority of the length of these ditches are bordered by mature native cottonwood trees and various riparian shrubs. The preliminary plat labels the ditch and the adjacent riparian vegetation together with a 50 foot wide buffer (25 feet on each side of the ditches) as an Area of Riparian Resource – No Improvement Zone.



The Nature View Estates covenants do not address management or use of the riparian area. Fish, Wildlife and Parks suggested that a new section be created to address use restrictions. Staff recommends a condition of approval that the Riparian Resource Management Plan be attached to the covenants and cross-referenced in the Wildlife section.

This subdivision proposal will create four new boundary lines on the west side of the property with the potential for four fence crossing through the riparian area and over the ditch. Although healthy, mature elk and deer can jump over most fences, fences are a great impediment during the cold winter months and can be a barrier to fawns and other young wildlife. Additionally, more fence crossing of the ditch will be a hindrance to ditch maintenance. In order to help mitigate the impacts of this subdivision on wildlife, staff is recommending fencing restrictions be added to the covenants. Additionally, staff recommends that the fencing section prohibit barbed wire fencing because it is the most harmful type of fencing to wildlife and livestock is prohibited by the covenants.

The Lower Mormon Ditch is a 2 foot to 3 foot wide ditch that flows through the center of the property from north to south. The ditch is bordered by native cottonwood trees and various riparian shrubs as it flows through the proposed common area and about two-thirds the length of the common boundary of Lots 4 and 5. Further to the south, the vegetation was mostly cleared for pasture; this is where the applicant has proposed to put the ditch below ground in a pipe. Engineer Gordon Sorenson, representing Larry Kolb, owner of the ditch water rights, recommended that a 21 inch smooth bore pipe be used to line the ditch as opposed to a half pipe, in order to prevent leakage. He also had several other recommendations, including placing trash racks at each end of the pipe and requiring the Homeowners Association to routinely remove trash and maintain the pipe. These are recommended conditions of approval. Staff is also recommending a condition of approval to increase the ditch easement width from the proposed 15 feet to 20 feet, based on Subdivision Regulations. A second larger ditch, the Maclay-Kolb Ditch, runs along the western border of the property. It is west of all proposed development and will not be impacted by the subdivision.

The eight lots will be served by a new private cul-de-sac, Nature Court, which will connect to Nature Drive, a private gravel road that intersects with Kimwood Drive, a public paved road. The applicant proposes to upgrade Nature Drive to a 24 foot wide paved road with a sidewalk on the west side and approximately 150 feet of curb and gutter near the intersection with Kimwood Drive.

Nature Drive is located within a 60 foot wide private access easement that narrows down to a 40 foot width for the last 150 feet near Kimwood Drive. Public Works noted that the private access easement appeared to not include a public utility easement and recommended that the applicant provide information regarding their right to use Nature Drive for the proposed subdivision access and placement of utilities. Staff has recommended conditions of approval to address these issues.

On the south side of Nature Drive there is a shallow ravine that contains cottonwood trees and various other native riparian shrubs. OPG has recommended a condition of approval that both Public Works and OPG review the final road design plans and placement within the easement in order to assure that loss of riparian vegetation is minimized.

Nature Court will be paved to 24 feet wide with a drainage swale on the west side and a boulevard sidewalk on the east side, all within a 50 foot wide private access easement. This street proposal meets all of the applicable Subdivision Regulations except for the lack of curbs and gutters, which are required when lot frontages average 175 feet or less. The average lot frontages in this proposal are 135 feet. The applicant has requested a variance and proposed the drainage swale to handle stormwater run-off as opposed to curbs and gutters directing water to a drainage facility. Both Public Works and OPG support the variance request.

On April 6, 2004, the Missoula Consolidated Planning Board conducted a public hearing on this request and voted 9 to 0 to approve the variance request and to approve the Nature View Subdivision for Lease or Rent on Lot 1 and the Nature View Subdivision, subject to the conditions contained in the staff report, with amendments to Conditions 2, 9 and 12.

Clarify Condition 2: Plans for the construction of Nature Drive and Nature Court shall be reviewed and approved by Public Works and OPG prior to final plat approval. Plans for placement and location of Nature Drive and Nature Court shall be reviewed and approved by OPG for purposes of protecting areas of riparian resource prior to final plat approval.

Add a sentence to the Riparian Plan (Condition 9): Prior to final plat approval, the covenants shall be amended to include the Riparian Area Management Plan as Exhibit A. Section C. of the plan shall be amended to include the following statement: "Dead and downed vegetation and hazardous trees may be removed in the interest of public safety and the ground litter may be treated with prescribed fire as necessary." The management plan must be referred to/cross-referenced in the Wildlife section of the covenants.

Add a sentence to the Pet section (Condition 12): Prior to final plat approval, Section 4.2.9 of the covenants shall be amended to delete the last sentence and replace it with the following: "Pet food should be stored indoors or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, etc. When feeding pets, do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home. Pets must be confined to the house, in a fenced yard or in an outdoor kennel area when not under the immediate control of the owner and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current State law, it is illegal for dogs to chase hooved game animals. The owner of the dog may also be held personally responsible. (MCA 87-3-124)." Dogs must be kept on a leash along Nature Drive.

Ray DiPasquale, PCI, developer's representative, stated a fair amount of time was spent working with OPG, the applicant and Public Works to come up with the proposal presented. A lot had to do with Jackie Corday's involvement in the protection of the riparian areas and the kind of efforts that will be maintained now and through construction to protect the wildlife corridors. The applicant is comfortable with the conditions of approval, including the amendments made by the Planning Board. The sidewalk on Nature Drive will actually be on the north side.

Chairman Evans opened the public hearing.

Commissioner Curtiss stated the addition to the Riparian Plan by the Planning Board regarding treating ground litter with fire if necessary raised a concern about a fire getting out of control. She asked if the Missoula Rural Fire District had any comments on this concern. How many prescribed burns go out of control in a year.

Curt Belts, Assistant Chief, Missoula Rural Fire District, stated they wouldn't be any different than anyone else. Many fires get away each year. They have responded to many prescribed burns that have gotten away this year, more this year than in the past few years, since they have been controlling burning permits. It is partially due to the dry conditions, people don't understand how dry it is out there. Wind is also a factor. The key for protecting a controlled burn is to have people who can keep it under control. Allowing them to burn in the riparian area will not harm anything as long as they have people to control it and understand that they are responsible for the fire if it gets away; the fire department will charge them and they are liable for damages.

Commissioner Curtiss asked if anything should be added to the covenants regarding prescribed burns.

Chairman Evans stated she would rather not do that, there are rules associated with burn permits.

Evie Barba stated she lived on Lot 22 of the Shelby Addition. She has had flooding in both her front yard and back yard since she moved there in 1994. She had trouble with her septic system last spring and cannot mow her lawn. She is worried that she will have more flooding as a result of this development.

Ray DiPasquale showed where Ms. Barba's lot was located on the map. Lot 22 is just east of the proposed boundary line between Lots 2 and 3. There was a lot of discussion from the neighbors about previous activities of the farmer who used to own the property. He commonly practiced flood irrigation techniques in his fields. That practice will be eliminated with the subdivision. None of the lots will have irrigation rights to either of the ditches. Another characteristic of the property is that the overland flow pattern is from the west to the east, across this property. The new roadway will be constructed in a manner that will provide an interceptor of the overland flow. Additional drainage structures have been provided within the swaled drainage collection system on the west side of the roadway to control run-off from the property. Also, the Maclay Lolo Ditch is going to provide a cutoff for anything coming from further west of the property. All those factors will actually create a reduction in run-off rates after development is completed. In addition to all those measures, a swale will be provided to carry run-off toward the open space area, again to direct flows away from the Shelby Addition. Only the Lower Mormon Ditch will be enclosed in a pipe. Almost the entire length of the ditch will be piped. It will not be piped in the Common Area/Open Space and in a portion of Lot 4 where there is heavy riparian vegetation and steep slopes, designated as a No Build Zone. OPG felt those sensitive, natural area should not be piped. To address concerns of the neighbors and to create a better building envelope on Lot 4, they will use a half pipe lining for a portion of the ditch into the riparian area. This allows the riparian vegetation to remain in place while still lining a portion of the ditch. Some damage to the riparian vegetation will occur during that construction, but it won't be as substantial as where the ditch will be piped. The piping begins at approximately the bend in the angle point of the property line on Lot 4 and continues to the head of the cul-de-sac, runs along the west side of the roadway all the way down Nature Court, goes across Nature Drive to the south and then reconnects to the existing open ditch on the south side of Nature Drive. The existing Lower Mormon Ditch discharges a little bit further to the east and then there is a large oxbow.

Sharon Reed stated that two weeks ago discussions were heard about the same ditch through another subdivision, Ireland Acres. She wondered why Larry Kolb has not been held responsible for his ditch and the damage it has done to other property. She thinks he should be responsible, there is documentation that his ditch has been doing damage for years.

Colleen Dowdall stated it would be a private cause of action. There have been successful cases against ditch companies that cause damage to private property.

Commissioner Curtiss stated that the ditch company commented that trash collectors are needed at the end of the pipe. However, would it not be the ditch company's responsibility to clean up the garbage caught by the collectors.

Colleen Dowdall stated it certainly is the ditch company's responsibility. Recent legislation has attempted to protect irrigation ditches (agricultural water uses) from encroaching development. It is an important protection in the eyes of the Legislature. Ditch companies can ask for mitigation to protect agricultural water users. Whether that particular item is required is a matter for the Board's discretion in determining if this is something this developer should do to mitigate their development's impact on agricultural water users.

Commissioner Curtiss asked about the fencing requirements.

Liz Mullins stated that the conditions prohibit fencing.

Commissioner Curtiss stated that fencing is prohibited in the area indicated, but is there a requirement to put up a fence elsewhere on the property.

Liz Mullins stated there was no such requirement.

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

Chairman Evans asked if the requirement for physical and legal access is satisfied.

Colleen Dowdall stated the first condition of approval is that the developer provide evidence that legal and physical access to the subdivision exists on Nature Drive, or by some alternative, meeting the requirements of the Subdivision Regulations. She is not satisfied that the surveys that show the easements provide legal and physical access. Before the plat can be filed, the developer will have to show that exists.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Section 3-2(7) of the Missoula County Subdivision Regulations to not provide curb and gutter along Nature Court, based upon the findings of fact in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

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Commissioner Curtiss moved that the Board of County Commissioners approve the Nature View Estates Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report and including those revisions as suggested by Planning Board. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the Nature View Estates Subdivision for Lease or Rent on Lot 1 of Nature View Estates, based on the findings of fact in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

#### **Nature View Estates Conditions of Approval:**

##### **Roads**

1. The developer shall provide evidence that legal and physical access to the subdivision exists on Nature Drive or by some alternative which meets the requirements of the Subdivision Regulations, to be approved by OPG and the County Attorney's Office, prior to final plat approval. *Subdivision Regulations Article 3-2(2)(D), 5-1(G) and OPG recommendation.*
2. Plans for the construction of Nature Drive and Nature Court shall be reviewed and approved by Public Works prior to final plat approval. Plans for placement and location of Nature Drive and Nature Court shall be reviewed and approved by OPG for purposes of protecting areas of riparian resource prior to final plat approval. *Subdivision Regulations Article 3-2(1)(J), 3-1(5) and OPG recommendation.*

##### **Fire**

3. The design and placement of the water tank for fire fighting water supply within the subdivision shall be reviewed and approved by the Missoula Rural Fire District and Public Works prior to final plat approval. *Subdivision Regulations Article 3-7 and Missoula Rural Fire District recommendation.*
4. Prior to final plat approval, the covenants shall be amended to add the following new Section 4.2.19: Address Signs. "Each residence must install an address sign at least six inches in height made of a reflective material that is clearly visible from the street." *Subdivision Regulations Article 3-1(1)(B) and Missoula Rural Fire District recommendation.*
5. Prior to final plat approval, the covenants shall be amended to add the following as the last sentence of Section 5.4.5: "The Association shall maintain the water storage tank for fire suppression system." *Subdivision Regulations Article 5-1(5)(k)(xi) and OPG recommendation.*
6. Prior to final plat approval, the covenants shall be amended to add the following new Section 4.2.18: Parking Restrictions. "No parking is allowed on Nature Court, unless for an infrequent event at a home where guests are invited, in which case vehicles shall be parked on one side of the street only in a manner that will not impede two-way traffic." *Subdivision Regulations Article 3-1(1)(B) and Missoula Rural Fire District recommendation.*

##### **Irrigation Ditch**

7. Prior to final plat approval, the covenants shall be amended to add the following as the third sentence of Section 10.4.5: "Additionally, the Association shall routinely clean out the trash racks on the ends of the irrigation pipe and maintain and/or repair the irrigation pipe located with the subdivision." *Subdivision Regulations Article 3-1(1)(B), Irrigation Ditch Owner and OPG recommendation.*
8. The final plat shall indicate a 20 foot wide irrigation ditch easement parallel to and overlapping with the 50 foot wide Nature Court access easement. *Subdivision Regulations Article 3-6 and OPG recommendation.*

##### **Natural Resources**

9. Prior to final plat approval, the covenants shall be amended to include the Riparian Area Management Plan as Exhibit A. Section C. of the plan shall be amended to include the following statement: "Dead and downed vegetation and hazardous trees may be removed in the interest of public safety and the ground litter may be treated with prescribed fire as necessary." The management plan must be referred to/cross-referenced in the Wildlife section of the covenants. *Subdivision Regulations Article 3-13, Fish, Wildlife and Parks and OPG recommendation.*
10. Attachment C to this report shall be attached to the covenants as Exhibit B, and Section 4.2.10 shall be amended to delete the last sentence of the section and include the following as the second paragraph: "Fencing is optional. No barbed wire fencing is allowed in the subdivision. If the owners of Lots 4-8 choose to fence, the western boundary fence cannot be placed any further west than as shown in Exhibit B. The intent of this restriction is to preclude fencing across the irrigation ditches to allow for wildlife movement and ease of ditch maintenance." *Subdivision Regulations Article 3-1(10) and OPG recommendation.*
11. Prior to final plat approval, Section 11.2 of the covenants shall be amended to include the following: "Covenants relating to garbage, fencing, wildlife, riparian resource areas, domestic pets and noxious weed control or revegetation may not be amended, modified, added to or deleted without the written consent of the governing body." *Subdivision Regulations Article 3-1(10), Fish, Wildlife and Parks and OPG recommendation.*
12. Prior to final plat approval, Section 4.2.9 of the covenants shall be amended to delete the last sentence and replace it with the following: "Pet food should be stored indoors or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, etc. When feeding pets, do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home. Pets must be confined to the house, in a fenced yard or in an outdoor kennel area when not under the immediate control of the owner and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current State law, it is illegal for dogs to chase hooved game animals. The owner of the dog may also be held personally

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responsible. (MCA 87-3-124). Dogs must be kept on a leash along Nature Drive." *Subdivision Regulations Article 3-1(10), Fish, Wildlife and Parks and OPG recommendation.*

13. Prior to final plat approval, Section 4.2.16 of the covenants shall be replaced with the following:

"Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, bears, mountain lions, wolves, skunks and raccoons. Contact the Montana Fish, Wildlife and Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners 'live with wildlife.'

The following covenants, along with the Nuisances and Animals/Pets sections, are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

There is the potential for vegetation damage by wildlife, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be aware of this potential damage. They should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Homeowners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.

Do not feed wildlife or offer supplements (such as salt blocks), attractants or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against State law (MCA 87-3-130) to provide supplemental feed attractants if it results in a 'concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety.' Also, homeowners should be aware that deer might occasionally attract mountain lions to the areas.

Barbecue grills should be stored indoors. Food spills and smells on the grill or lid can attract bears and other wildlife. Gardens can attract wildlife. Keep the produce picked because rotting vegetables can attract bears and skunks. Do not allow rotten fruit to collect under trees. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.

Birdseed is an attractant to bears. Consider not using them in this area between the months of April and October. If used, bird feeders must: a) be suspended a minimum of 20 feet above ground level; b) be at least 4 feet from any support poles or points; and c) should be designed with a catch plat located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds. Compost piles can attract skunks and bears and should be avoided in this subdivision. If used, they should be kept indoors or built to be wildlife-resistant." *Subdivision Regulations Article 3-1(10), Fish, Wildlife and Parks and OPG recommendation.*

14. Prior to final plat approval, Section 4.2.14 shall be amended to include the following: "Lot owners shall revegetate any ground disturbance caused by construction or maintenance with beneficial species at the first appropriate opportunity after construction or maintenance is completed." *Subdivision Regulations Article 3-1(1)(B), 3-2(8)(J) and County Weed District recommendation.*
15. A Revegetation Plan for disturbed sites shall be reviewed and approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Articles 3-1(1)(B) and County Weed District recommendation.*
16. Prior to final plat approval, the covenants shall be amended to include the following: "Radon Mitigation: EPA has designated Missoula County as having a high radon potential (Zone 1). All residences should incorporate passive radon mitigation systems into the design." *Subdivision Regulations Article 3-1(1)(D), City-County Health Department and OPG recommendation.*

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

THURSDAY, APRIL 22, 2004

The Board of County Commissioners met in regular session; all three members were present. In the morning, Commissioner Curtiss presented the Sentinel Kiwanis Volunteer Award at their meeting held at the Florence Building.

Claims List – The Commissioners signed the Claims List, dated April 20, 2004, with a grand total of \$38.40. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed three (3) Claims Lists, dated April 21, 2004, with the following grand totals:

- 1) \$10,643.37;
- 2) \$5,924.46; and
- 3) \$30,392.08.

The Claims Lists were returned to the Accounting Department.

Claims Lists – The Commissioners signed seven (7) Claims Lists, dated April 22, 2004, with the following grand totals:

- 1) \$5,597.81;
- 2) \$6,165.00;
- 3) \$78,635.92;
- 4) \$18,803.34
- 5) \$3,600.51;
- 6) \$5,566.00; and
- 7) \$6,032.40.

The Claims Lists were returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

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

Agreement – The Commissioners signed a Memorandum of Agreement for WIA Work Experience, dated April 19, 2004, between Missoula County Nutrition Services & WIC Program and the Human Resource Council (“HRC”). The HRC uses Missoula County as a work site to provide work experience for their clients. All terms and conditions are set forth therein. The document was returned to Marie Pruitt in Human Resources for further signatures and handling.

Easement – The Commissioners signed a Public Roadway Easement, dated March 11, 2004 between Missoula County and the Estate of Earl R. Stewart and Shelter West, Inc., in order to clear up ownership for Roundup Drive in the 44 Ranch Estates Subdivision. The property is known as Tract B of COS No. 1153 and Tract 1 of COS No. 3462 located in the NW¼ of Section 13, T 14 N, R 20 W, PMM. The document was returned to Public Works Director Greg Robertson for further signatures and handling.

Contract – The Commissioners signed a Professional Services Contract between Missoula County and JTL Group for repair of the asphalt pathways within Park 3 of the Missoula Development Park. The total amount shall not exceed \$2,264 for Missoula County (JTL and DJ&A will absorb the remaining costs). The new pathways will be completed by July 1, 2004. All other terms and conditions are set forth therein.

Resolution No. 2004-059 – The Commissioners signed Resolution No. 2004-059, dated April 22, 2004, granting an agricultural covenant to Paul, Margaret and Natalie Hanson (owners of “Hanson Ranch”) to utilize the exemption for creation of parcels to be used exclusively for agricultural purposes. The property is known as Tract 1 of COS No. 5544 located in the SW¼ of Section 26, T 14 N, R 20 W, PMM, Missoula County. This action was approved by the Commissioners at their Public Meeting on September 19, 2001.

Resolution No. 2004-060 – The Commissioners signed Resolution No. 2004-060, dated April 22, 2004, setting fees for the Department of Public Works Plan Review and On-Site Inspections, as set forth in Schedule A attached to the Resolution. The fees become effective May 1, 2004.

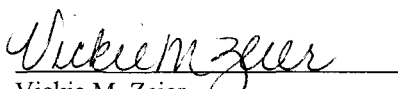
RSID Loan – Acting Chairman Curtiss signed a Certificate of Completion for Special Improvement District No. 8473 Bond (Department of Natural Resources and Conservation Revolving Loan Program), in the amount of \$649,936.00. This Bond was issued to finance the improvements to the Lolo Municipal Wastewater System. The document was returned to Jesse Satley in Public Works for further handling.

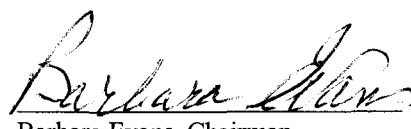
Letter – Pursuant to a meeting with the Missoula Development Authority Members (“MDA”) on March 22, 2004 the Commissioners approved and signed a letter to the MDA, dated April 22, 2004 outlining the direction on how the MDA should proceed on various issues, as set forth therein. The Commissioners also expressed their appreciation for all the time and energy the members devote to the tasks that come before the MDA.

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

#### **FRIDAY, APRIL 23, 2004**

The Board of County Commissioners did not meet in regular session. Commissioners Curtiss and Evans were out of the office all day, with Commissioner Curtiss coming in briefly for signatures. Commissioner Carey was out of the office all afternoon.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

#### **MONDAY, APRIL 26, 2004**

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 afternoon, the Commissioners and County financial staff personnel met with representatives of Elmore & Associates for the Audit Exit Interview.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated April 22, 2004, with a grand total of \$2,659.61. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtis signed two (2) Claims Lists, dated April 23, 2004, with the following grand totals:

- 1) \$6,093.56; and
- 2) \$6,039.47.

The Claims Lists were returned to the Accounting Department.

Plat Amendment – Per recommendation of the Office of Planning and Grants at their Planning Status meeting on April 26, 2004 the Commissioners approved and signed a letter dated April 27, 2004 to Wesmont Builders and WGM Group, Inc., approving their request for an amendment of the Canyon Creek Village Subdivision preliminary plat. The amended plat addresses the following: 1) Re-alignment of Kendrick Place; 2) Park area modification; and 3) Boulevard sidewalk variance request.

Phasing Plan Amendment –the Commissioners approved and signed a letter dated April 12, 2004 to Craig Wickham, Territorial Engineering and Surveying, Inc., approving his request for an amendment of the Canyon East Subdivision phasing plan. The amended plan will minimize construction traffic through completed sections.

#### TUESDAY, APRIL 27, 2004

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, Commissioner Curtiss spoke to 5<sup>th</sup> grade classes at Hellgate Elementary School regarding “underage drinking”.

Plat – The Commissioners signed the Plat for Belker Lots, located in the NW¼ of Section 35, T 15 N, R 21 W, PMM, Missoula County, a total gross and net area of 5.12 acres, with the owners of record being Eric A. and Virginia M. Belker.

Plat and Agreement – The Commissioners signed the Plat and Development Agreement for Carlson Acres, located in the NW¼ of Section 34, T 11 N, R 20 W, PMM, Missoula County, a total gross area of 2.47 acres, with the owners of record being Clinton E. and Sally L. Carlson. The Development Agreement, dated March 3, 2004 relates to weed control, revegetation, a radon mitigation system, and water rights.

#### ADMINISTRATIVE MEETING

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

Resolution No. 2004-061 – The Commissioners signed Resolution No. 2004-061, dated April 7, 2004, a Budget Amendment for the Historical Museum reflecting \$20,000.00 for a National Park Service grant. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Contract – The Commissioners signed a Missoula County Employment Contract, dated March 15, 2004 with John Bruce Smith for the provision of services as Dental Hygienist on a 0.50 FTE, twenty hours per week basis, for the Partnership Health Center. The total amount shall not exceed \$29,120.00. The term will be March 15, 2004 through June 30, 2004. All other terms and conditions are set forth therein. The document was returned to Terry Delgadillo at PHC for further signatures and handling.

Addendum – The Commissioners signed an Addendum, dated April 27, 2004 to the Missoula County Personnel Policies – Drug & Alcohol Testing Policy. The Addendum includes two minor revisions which update the testing policy for commercial drivers’ licenses, required by the federal Department of Transportation for Public Works Department employees engaged in safety sensitive functions (driving, operating equipment, mechanics). The document was returned to Patty Baumgart in Human Resources for further handling.

Resolution No. 2004-062 – Chairman Evans signed Resolution No. 2004-062 (Superseding RSID #8472 Resolution No. 2002-002), dated April 27, 2004 stating the intention to create RSID No. 8484 for the paving of Spring Hill Road, replacement of creek crossing culvert, and installation of a school bus turnout and signage, for total estimated costs of \$208,000. All other terms and conditions are set forth therein. County Clerk and Recorder Vickie M. Zeier signed a Certificate as to Resolution and Adopting Vote. The document was returned to Jesse Sattley, RSID Coordinator, for further handling.

Easement Agreements – The Commissioners signed a Land Easement Agreement and Memorandum of Land Easement Agreement, both dated April 27, 2004 between Missoula County a/k/a Missoula County Fairgrounds d/b/a Western Montana Fair and Gold Creek Cellular of Montana Limited Partnerships d/b/a Verizon Wireless, for the light/cell tower at the Fairgrounds, located at 1101 South Avenue West, Missoula. The annual easement fee will be \$6,000.00; the term will be five (5) years. All other terms and conditions are set forth therein. The document was returned to Scot Meader at the Fair for further signatures and handling.

Request for Action – The Commissioners approved and signed a request, dated April 27, 2004 from the County Engineer and the Director of Public Works to advertise the Van Buren Street Pedestrian Bridge Project for bid. The project is currently programmed in the County budget at a cost of \$458,790.

Letter – The Commissioners signed a letter, dated April 20, 2004 to David Stack, Vice President of the National Museum of Forest Service History, supporting the museum’s efforts to build a museum west of the Missoula International Airport. The Commissioners feel that this new museum will preserve the history of the U.S. Forest Service for the education and enjoyment of the public.

Other items included:

- 1) The Commissioners approved and signed a request by Clerk & Recorder Vickie Zeier to allow an employee (Debby Gore) to exceed the 160-hour donated sick leave pay limit.
- 2) Bob Brown requested that a Commissioner give the welcome at the annual 4<sup>th</sup> of July celebration at Fort Missoula. No Missoula County Commissioners are available on that date.

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

**WEDNESDAY, APRIL 28, 2004**

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

Plat – The Commissioners signed the Plat for Stang Addition, a four-lot subdivision of a portion of Lot 83, Orchard Homes Company Addition No. 6, located in the SW¼ of Section 26, T 13 N, R 20 W, PMM, Missoula County, a total lotted area of 4.37 acres, with the owners of record being P. David Edgell and Dave Traver.

CHIEF ADMINISTRATIVE OFFICER MEETING

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

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Linda Stoll for services to Missoula County in preparation for the 2005 Legislative Session. The total amount shall not exceed \$8,250. The term will be March 29, 2004 through December 31, 2004; continuation of this contract for the period July 1, 2004 through December 31, 2004 requires the Commissioners to appropriate unspent FY 04 funds. All other terms and conditions are set forth therein. The document was forwarded to Linda Stoll in Helena for signature and return.

Agreement – The Commissioners signed a Missoula County Employment Agreement with Larry Farnes to perform the functions and duties as the Director of the Department of Facilities Management. Mr. Farnes' yearly salary shall be \$69,909 (\$33.61 per hour). The term will be May 8, 2004 through December 31, 2007. All other terms and conditions are set forth therein.

Other items included:

- 1) The Commissioners reviewed and approved a letter signed by CAO Ann Mary Dussault, dated April 28, 2004 to Andree Van Nice and other Golden West residents, providing answers to several questions regarding the Mullan Corridor sewer project and the City sewer contracts.
- 2) The Commissioners reviewed and approved a request from Missoula County's IS/Telephone Services Department to enter into negotiations with Blackfoot Communications to develop a contract for communications and data services in order to connect nine remote sites in the City/County. This will be a three year contract for nine T-1's (which are currently provided by Qwest) and a ten year contract for dark fiber from the Courthouse to the Detention Facility and County Road Shops. (Commissioner Curtiss recused herself and abstained from voting as her husband works for Blackfoot Communications).
- 3) The Commissioners reviewed a letter dated April 26, 2004 to Steve Johnson, Director of Human Resources, from a Missoula County Sheriff's Office employee who wishes to appeal to the BCC in a grievance matter. The BCC approved a request from the employee for an extension in the five working day period to research the matter in more detail in order to prepare his appeal.

PUBLIC MEETING – April 28, 2004

The Public Meeting was called to order at 1:30 p.m. by Commissioner Barbara Evans. Also present were Commissioner Bill Carey, Commissioner Jean Curtiss, Deputy County Attorney Colleen Dowdall, County Bidding Officer Doreen Culver and County Public Works Assistant Director Chuck Wright.

Pledge of Allegiance

Public Comment

None

Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$163,788.08. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Bid Award (Missoula County Fair): Ice Rink Addition – Postponed from April 21, 2004

Doreen Culver, Bidding Officer, presented the staff report.



Advertising was done for Phase 2 of the Ice Rink Renovation project with three companies responding as follows:

Bidder's Name	Bid Total	Alternate Bid Total
Western Interstate	\$577,300	1 - + \$ 100,000 2 - + \$ 9,400 3 - + \$ 10,900 4 - + \$ 54,700
D. Lower Construction	\$718,500	1 - + \$ 320,000 2 - + \$ 37,000 3 - + \$ 19,000 4 - + \$ 47,000
Quality Construction	\$543,450	1 - + \$ 11,210 2 - + \$ 36,420 3 - + \$ 43,110 4 - + \$ 50,700

Staff recommends that the bid for Phase 2 of the Ice Rink Renovation project be awarded to Quality Construction for the base bid of \$543,450, per the architects review, as the lowest and best bid. The amount will be financed by the County and paid for by MAYHA. Dale Bickell, Chief Financial Officer, is also comfortable with the bid amount and recommends it be awarded to Quality Construction.

Chairman Evans asked for public comments. There were none.

Commissioner Curtiss moved that the Board of County Commissioners approve awarding the bid for Phase 2 of the Ice Rink Renovation project to Quality Construction for the base bid of \$543,450, per staff and the architects recommendation, as the lowest and best bid. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Hearing (Certificate of Survey): Job Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as parcel 4-B2 of COS 2762 located in the northeast one-quarter of the northeast one-quarter of Section 5, Township 13 North, Range 20 West.

Marvin and Lynn Job have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately five acres in size located near Missoula, Montana. Marvin and Lynn propose to create one approximately one acre parcel for transfer to their son, Bryce J. Campbell, for residential purposes and keep the remaining approximately four acre parcel for residential purposes as well.

The history of the parcel is as follows: A quit claim deed was filed in 1982, deeding the parcel to Fred G. Carl. In 1988, Fred Carl filed a warranty deed, deeding the parcel to Marvin Job.

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

Chairman Evans opened the public hearing.

Lynn Job was present and came forward to answer any questions the Board may have.

Chairman Evans asked if Mrs. Job intended to transfer this property to her son.

Lynn Job stated that was correct.

Chairman Evans stated that the Board is charged with making a determination of whether or not this is an attempt to evade subdivision review.

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

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

Commissioner Curtiss stated that Mrs. Job would receive a letter confirming today's action. This is just permission to divide the property, it does not give Health Department approval, zoning compliance and no guarantee of access or anything else.

**Hearing (Certificate of Survey): Joslin Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract A-3 of COS 4238, located in the southeast one-quarter of Section 20, Township 15 North, Range 15 West.

Frank L. Joslin has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 18 acres in size located near Frenchtown, Montana. Frank proposes to create one approximately two acre parcel for transfer to his wife, Carolyn L. Joslin. The parcel will then be sold in order to pay for open heart surgery for Carolyn. The remaining approximately 16 acre parcel will be for residential purposes.

The history of the parcel is as follows: Calvin C. and Betty M. Touchette filed a warranty deed, deeding the parcel of land to David R. Laursen in January 1976. David Laursen sold the property to David and Kathy Jovin in May, 1977. The Jovin's had the land deeded over to Frank and Carolyn Joslin in November, 1985. Frank and Carolyn gifted two daughters an acre each in 1999, leaving Tract A an 18+ acre parcel.

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act except as listed below:

- Family Transfer to daughters Lori Fielding and Jody Sweet, COS 4238, July 7, 1999

Chairman Evans opened the public hearing.

Frank Joslin stated there is a dwelling on the parcel being created. It was the original home they lived in some years ago and they have since built another home on the property. Renters who have occupied this dwelling for a couple of years have expressed an interest in purchasing the home and property. The money is needed for medical expenses.

Commissioner Carey asked if Mr. Joslin could assure the Board that this was not an attempt to evade subdivision review.

Frank Joslin stated it was not an attempt to evade subdivision review. His wife just had open heart surgery.

Commissioner Curtiss stated that the history of the parcel does show that the parcel is held in both names. It needs to be in his name only in order to gift it to his wife.

Frank Joslin stated he understood that requirement and the property would be in his name only before the transfer is complete.

Colleen Dowdall stated that in order to file the Certificate of Survey, the property has to be in just his name, then the parcel created will be deeded to his wife.

Frank Joslin stated that was correct.

Colleen Dowdall stated the motion did not have to be contingent on the title being transferred to his name, it would happen as a matter of course.

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

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

Chairman Evans stated that Mr. Joslin would receive a letter confirming today's action. This is just permission to divide the property, it does not give Health Department approval, zoning compliance and no guarantee of access or anything else.

#### **Hearing: Petition to Alter Remount Road (Nine-Mile Area)**

Chairman Evans opened the public hearing.

Dick Ainsworth, Professional Consultants, Inc. stated that this is a petition to alter Remount Road located in Section 28, Township 15 North, Range 22 West, from the southern boundary of the northeast one-quarter of the northwest one-quarter of Section 28 to the northern boundary as described in Book 450 Micro Page 2001.

The reasons for the request are as follows:

1. The existing traveled road does not coincide with the position shown on Deed Exhibit #59.

The following landowners have been notified: Kenneth K. Krout, Donna M. Paige, Cora A. Krout, Harvey Millhouse, Patrick K. Paige and Lorraine Millhouse.

His firm is currently doing a survey of the property that adjoins the easterly side of this section of road. In doing the survey, it was discovered that there is an old deed exhibit for that road that doesn't follow the existing traveled way. The Surveyor Office suggested they petition the Board of County Commissioners to realign the right-of-way so that it fits the present traveled way. Their client took the petition to the neighbors who have all signed the request to realign the road.

Chuck Wright stated that this is the smartest thing to do, to alter the right-of-way to meet the existing traveled way. It is a good idea and he is in full support of the request.

Chairman Evans asked if this required a site inspection before the Board can make their decision.

Colleen Dowdall stated that was correct.

Commissioner Curtiss asked if the waiver of the fee needed to be approved as well.

Colleen Dowdall stated the Surveyors Office usually handles the waiver of fee.

Chuck Wright stated they waived the fee because the request is in the County's benefit.

Chairman Evans stated that a site inspection by one County Commissioner and a representative from Public Works will be conducted, the Board will receive a report based on the inspection and then they will make their decision. That action will be postponed to the Public Meeting next Wednesday, May 5, 2004.

Commissioner Carey stated that he would not be at the Public Meeting on May 5, 2004.

Colleen Dowdall stated it would be acceptable to have one of the two people who conducted the site inspection present to make their report and recommendation.

**Hearing: Site Access Agreement for a Well in Hellgate Park (East Broadway)**

Lisa Moisey, County Parks Coordinator, presented the staff report.

This is a request from Mountain Water Company, via Land and Water Consulting, for a Site Access Agreement to allow Mountain Water to install and operate groundwater monitoring wells on County Park property, located on East Broadway, adjacent to the Clark Fork River. The park area is known as "Hellgate Park."

Hellgate Park is located between East Broadway and the Clark Fork River, adjacent to the Cobblestone Condos. This is an undeveloped County Park, maintained by the City of Missoula. This is a park that the County Park Board has recommended for transfer to the City. Mountain Water, in conjunction with the University of Montana Geology Department, plans to drill approximately two monitoring wells to a depth of 60 feet and 160 feet, respectively. The purpose of the wells is to collect data on water levels and water quality and additionally to monitor the Missoula Aquifer drinking water supply.

A representative from Land and Water Consulting attended the joint City-County Parks Boards meeting on April 13, 2004 and presented this request. City Parks received this request from Land and Water the day before the meeting, and therefore it was not placed on the agenda. However, the County Park Board did make a contingent recommendation, based on the need for public input. The Board voted to recommend approval of the request, with the requirement that Land and Water work with the City Parks and Recreation Department on the optimal site location for the wells. The location shown on the attachment was thought not to be the optimal location, given that it was sited in the middle of the widest and most useable portion of the park. The reason for working with City Parks on the location is that this park is planned to be transferred to the City in the near future.

There were a few items that needed to be addressed. Because this is one of the parks that the County Park Board is asking the City to accept through a transfer, the Board wanted to make sure that the actual location of the wells was approved by City Parks and Recreation. That language has been included in the proposed Site Access Agreement Contract. The County Risk Manager wanted to make sure that if there was any road construction or disruption to the land during the process of installing the wells, it would be repaired and reclaimed by Mountain Water. That language has also been included in the Contract. There is also language in Contract that if the park is transferred to the City, the Contract would transfer as well.

Staff recommends the agreement be signed, pending review by the County Attorney's Office and the County Risk Manager.

In discussion, both the City and County Parks Boards questioned whether the wells could be used for irrigation in the future. Hellgate Park is not irrigated and this improvement may be necessary in the future. The Land and Water representative noted that these monitoring wells are of a completely different design and could not be used for irrigation. After this information, the County Park Board did not address recommended fees or compensation to the County.

Chairman Evans opened the public hearing.

Charlie Vandam, Land and Water Consulting, stated this is being done for Mountain Water Company. The main purpose is a research project with the University of Montana Geology Department and Bill Wossner. A secondary, long-term purpose is that the wells will be used as early warning sentinels to detect any contaminants that might be flowing through the system into the Missoula Aquifer. Mountain Water desires to use this for a long period of time.

Commissioner Carey asked if there was a time certain when the Contract expires and the wells have to be removed.

Charlie Vandam stated that the Contract has language that, with notice by either party, the wells can be abandoned, but there is no length of time specified.

Commissioner Carey asked about how long the wells will be there; 20 years, 50 years, etc.

Charlie Vandam stated that it was for an indefinite period of time. Part of the use is as an early warning sentinel system for the Missoula Aquifer. The plan is to install continuous water quality monitors in the well at some point in time. The technology isn't there yet, but they anticipate that at some point they can install equipment that can give continuous water quality data as water flows through the Hellgate Canyon.

Commissioner Carey asked if there was a specific reason this location was chosen and will this be a lone sentinel or will there be a network of wells.

Charlie Vandam stated the location is critical. They want to install it right in the middle of Hellgate Canyon, at its narrowest point, so they can intercept the deepest part of the aquifer. The Hellgate Park is the ideal site. There are no

plans from Mountain Water Company for any other monitoring wells or a sentinel network. It is ideal for the research project and then to see if it can be used as a sentinel well in the future. The primary purpose is the research project for the University. The secondary purpose is as a sentinel well for long-term use.

Chairman Evans stated that she expected testing would be done if and when the dam is removed.

Charlie Vandam stated that is one of the concerns and part of the research project, looking at the interaction between surface water and groundwater into the Missoula Aquifer.

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

Commissioner Curtiss moved that the Board of County Commissioners grant the request from Mountain Water Company, via Land and Water Consulting, for a Site Access Agreement to allow Mountain Water to install and operate groundwater monitoring wells on County Park property, located on East Broadway, adjacent to the Clark Fork River, more commonly called Hellgate Park. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

#### **Hearing: Proposed Application to State CDBG Program on behalf of Nurture, Inc.**

Cindy Wulfekuhle: Thank you. Cindy Wulfekuhle, Office of Planning and Grants. On December 3, 2003, the Board of County Commissioners conducted a public hearing to receive comment concerning an application to the Montana Department of Commerce for a Community Development Block Grant (CDBG) application on behalf of Nurture, Inc. At that time the Board voted to approve an application for funding that will allow Nurture to retain employees and create new jobs for low and moderate income individuals over the next two years. The State CDBG program requires the public hearing be held no more than two months prior to an application being submitted. After the meeting in December, the primary lender changed from a local bank to the Community Reinvestment Fund (CRF). The time needed to find a new lender and receive financing approval exceeded the two month window that we had to submit the application, which is the reason why we rescheduled a public hearing for today. For the record, the total project cost is \$1,565,000. Sources of funding, in addition to the CRF (Community Reinvestment Fund) at \$995,000, are MAEDC (Missoula Area Economic Development Corporation) at \$195,000 and the CDBG program at \$375,000. The total CDBG grant request will be for \$400,000 which includes administration funds. For the record, Nurture is located at 5840 Expressway. The Commissioners have signed a resolution authorizing submittal of the grant application and after today's meeting, the Chairman will be asked to sign the application summary and certification for application documents. Thank you.

Chairman Evans: Thank you Cindy. Is there anyone here who would like to speak on this matter?

Dick King: My name's Dick King with the Missoula Area Economic Development Corporation, and what I've handed out is a updated letter from the company. You received a letter from them back in November, prior to the first time we did this public hearing. The letter hasn't changed much, but I thought it was appropriate for them to renew the letter and their commitment to the project remains the same. What's changed, as Cindy outlined, is we have a new senior lender and the project costs went up a little bit. The senior lender will be the Community Reinvestment Fund in Minneapolis, which is a non-profit corporation. They have agreed and given approval to lend \$995,000 to the company and then the CDBG program and MAEDC would lend a total of \$570,000, as Cindy outlined. We think it's a significant opportunity to work with the new owners of the company, the Striker Partners in Pennsylvania. They invested about \$6 million in the company to date. Their product, OatVantage™ is now the number one selling product in GNC Stores nationwide. If you go, their warehouse that they added to their plant just recently, I was there last week, there were 40 sacks of oat bran. Each sack contains about 2,000 pounds, or a ton, and there wasn't one container of beta-glucan, the finished product. Forty tons of oat bran is six weeks supply for the company right now, so they're very busy producing the beta-glucan nutritional supplement and this project will allow them to increase the capacity of the existing plant. It will improve the production capacity and it replaces a couple key pieces of equipment that are wearing out. Basically, it's a partnership with the new investors in the company that we're hoping will lead to an actual expansion of their physical plant as their demand for the product grows. Remember, that a 30% owner in the company remains General Mills. And if the possibility that General Mills would have the beta-glucan product added to its breakfast cereal products which would create a huge demand for what Nurture produces. So, we're pretty excited about it. The interesting thing, of course, was that it was a difficult loan and that's why the original senior lender that we talked about decided not to participate and we took it to CRF. They did a lot of due diligence on this company and are very high on the prospects of the company. I don't think they would have approved the loan otherwise. The company has continued to hire people, about 21 employees in place now. They've committed to hire two more in the near term and substantially more over the next year. I think it's a good use of the property, a very good occupant out at the Development Park as well.

Chairman Evans: Tell me if you will, Dick, since you say that they are the, that their OatVantage™ is nationwide a top seller, I've never even seen it advertised. How are they promoting it?

Dick King: They've advertised it in health food circles. If it's not at the GNC store here now, it will be very soon. If you go and ask the GNC store, you know, I'm interested in a non-medical supplement to reduce cholesterol, they'll bring out OatVantage™. The reason they haven't advertised nationwide is because they have limited production capability. That plant is running 24/7 now, they're getting everything out of it they can. One of the interesting things about the plant out there, when they first started, the process by which they extracted beta-glucan from oat bran was a chemical process, and they've converted as part of their business plan, it's now a water process. So, they're just dealing with water and oat bran and that's why they like to call themselves the "green" chemistry company. The interesting thing also, Community Reinvestment Fund, of course, doesn't create money out of nothing, they have to go find investors. This loan will be sold by them to a single investor who is interested in companies that promote good health and nutrition. A very interesting market out there and Nurture's tapping into that market. I'm sure you're going to see advertising about the company when they can increase their production.

Chairman Evans: Thank you. Any questions for Dick?

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Commissioner Curtiss: I have two. So, the goal of CDBG money, of course, is to help low and moderate income and new businesses and different things. How do they identify that they're hiring folks who are of low and moderate income and what skills will those people need?

Dick King: We did a survey of all the employees. We did it back in November and then we repeated the survey, finished it last week. So we've done two surveys of their employees. So we have the household income survey to document low/moderate income (LMI) status and that's where we came up with the 52%. There's a couple of people who are working out there that would be LMI, but they're still living with their family, so they have to use the household income. The company has a hiring and training plan that requires them to use the Job Service and in talking to the Job Service, that's how the placement is done. The Job Service is aware of the requirement for low/moderate income benefit, so that's how we will achieve that and they've signed off and agreed to do that. In fact, that's mentioned in the letter here. The second question, Jean, was?

Commissioner Curtiss: What skills will they need?

Dick King: Skills. The entry job at Nurture is operator, it's equipment operator, so they need some basic skills in running the machinery at the plant and they train them once they hire them. Then they are going to be hiring very soon an inventory manager and then they'll be hiring a quality control supervisor. Those will be a little higher level skill. As the plant expands, they'll have more operators and again, it takes about two weeks to train somebody to run, but that person needs to have basic skills around machinery. As the company grows, you'll see a few more jobs, quite a few more jobs, coming in the area of marketing and product distribution.

Commissioner Curtiss: Thank you.

Chairman Evans: Any other questions for Dick?

Commissioner Carey: Dick, in your sources of funds statement, you have two entities in the first position, does that just means that if things go bad, they just evenly divide things up.

Dick King: That probably needs to be revised. The position on the MAEDC loan would be second. CDBG would be second. What we're doing here is sharing, we're taking the three; let me back up for a second. The company has agreed to create a debt service reserve account and in that account they will deposit two and a half years of debt service for all three loans, so we'll then have an automatic withdrawal from that account every month to service the three loans. The two loans, the MAEDC loan and the Community investment loan, will be done as a single shared security, so we'll have a second position jointly on the land, building and equipment. CRF, of course, will have a first.

Commissioner Carey: Thanks.

Dick King: Sorry, that was an error.

Commissioner Curtiss: These are all loans. CDBG is not a grant, it's a loan.

Dick King: Correct. As we collect the payments, Jean, if you'll remember when we did a project with Pyramid Lumber, the County transferred the money to our revolving loan fund to match MAEDC so we could re-capitalize our revolving loan fund. We're not going to do that this time, we'll manage the program and then as we collect the payment, we'll write a check to the County, so it will help re-capitalize your revolving loan fund, which is also a very important asset force that we've used in some projects.

Chairman Evans: Thank you Dick. Anybody else? Anyone in the audience who would care to speak on this issue? There being none, we'll close the public hearing.

Commissioner Curtiss: So, then, because we already signed a resolution, we don't have to take additional action today, right? It's just the hearing.

Chairman Evans: I'm delighted to see that Nurture has survived this long and hope it continues to prosper.

#### **Consideration: ML Subdivision (2 lots) – off Waldo Road, northwest of the Wye**

Tim Worley, Office of Planning and Grants, presented the staff report.

This is a request from Gnia V. Lor and Ka Xiong, represented by Nathan Lucke of Landworks Consulting and Design, to create ML Subdivision, a two lot summary subdivision of a 10.12 acre parcel. The subdivision is located a mile and a half northwest of the Wye on Waldo Road, about one-fifth of a mile from its intersection with Highway 93.

The property is unzoned and the 1979 Wye-O'Keefe Creek Area Plan recommends a density of one dwelling unit per 5 acres. This proposal is essentially one dwelling per 5.06 acres, in compliance with the Comprehensive Plan recommended density for this area.

Waldo Road provides access to the site. It is a County maintained off-site paved road. There is one condition recommended by staff in relation to the road, that the RSID waiver on the plat be revised to reflect the totality of public improvements in the Subdivision Regulations. Currently, the RSID waiver only covers walkways.

Internal access to the lot will be provided by a 224 foot long shared driveway within a 30 foot private access and utility easement. Since the driveway exceeds 150 feet, staff recommends a condition amending the driveway design section of the Development Covenant to reflect Article 3-2(10)(E), which addresses turnaround location, unobstructed width, etc. There are no pedestrian facilities proposed with this subdivision. The applicants have addressed pedestrian standards by waiving the right to protest future public improvements, including walkways.

Individual wells will supply water to the lots and a shared septic system will be located on Lot 1. This location is less than a mile from Frenchtown Rural Fire Station #7, located near the Spring Meadows Subdivision, east of Highway 93. The nearest fire hydrant will be installed within the Gallatin Estates Subdivision, approximately one-half mile west of this subdivision. There is an agreement between the developers of the ML Subdivision and the developer of Gallatin Estates for use of this hydrant. The Frenchtown Rural Fire District is aware of this agreement. Staff recommends a condition that Frenchtown Rural Fire review the plan for a water supply for fire protection for ML Subdivision.

O'Keefe Creek runs through Lot 1. The plat shows a 50 foot No Build/No Alteration Zone adjacent to the creek in order to address riparian issues. There is also a 10 foot No Build/No Alteration Zone shown on Lot 2 that address a dry swale. The supplemental data sheet also shows Black Hawthorn vegetation on the property. Some of this vegetation is contained within the No Build/No Alteration Zone and some is not. After a site visit, additional Hawthorn on the property was noted. As a result, staff recommends that this additional vegetation be shown on the Riparian Resource Management Plan Map and that the No Build Zone be altered on the plat to include a buffer for this vegetation.

O'Keefe Creek is not in a mapped FEMA floodplain. This project was evaluated by Missoula County Floodplain Administrator Todd Klietz. He felt there was some flood risk at this location and as a result, staff has four recommended conditions directly related to the issue of potential flooding on the property.

First, staff recommends that a 100 foot No Build Zone be shown on the plat adjacent to O'Keefe Creek. This is a safety setback for dwellings. The second condition has to do with building elevations. The developer, within the Development Covenant, has proposed to maintain floor elevations that are essentially two feet above existing ground level. Staff is recommending that the information about this two foot floor elevation be placed on the plat itself. The third recommendation is for indemnification for Missoula County regarding approval of this subdivision, considering there is some level of flood risk. The final recommended condition is that the design engineer provide proof of errors and omissions insurance prior to final plat approval.

There is one other recommendation condition for a revegetation plan as recommended by Bill Otten of the County Weed District. In summary, staff recommends approval of the ML Subdivision.

Nathan Lucke, Landworks, developer's representative, stated that the developer understands all the conditions of approval and accepts the staff report as written.

Commissioner Curtiss asked what the size of the buffer would be around the Hawthorn.

Tim Worley stated there is no absolute standard in the Regulations. He felt that the area where there is additional Hawthorn is likely contained within the current No Build/No Alteration Zone, so he did not specify a specific setback. It needs to be acknowledged that it is there in the Riparian Management Plan and if need be, there should be an extension of the No Build/No Alteration Zone on the plat. He was not sure it would be necessary, considering where the Hawthorn is located.

Commissioner Curtiss asked if fencing was allowed in No Build Zones, in case someone wanted to put up a fence between the two pieces of property.

Tim Worley stated there were some specific provisions about fencing in the Development Covenant.

Nathan Lucke stated that there is no fencing allowed in the No Build Zone. There was a lot of concern from different agencies and conflicting information on whether they should or should not fence across O'Keefe Creek. The recommendation was to go with no fencing across any of the No Build Zones.

Tim Worley stated that within the Riparian Management Plan there is a provision that says no fencing across O'Keefe Creek will be permitted and any new or replaced fencing through other No Build/No Alteration Zones shall be wildlife friendly or smooth wire fencing.

Chairman Evans asked for public comments. There were none.

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

#### **ML Subdivision Conditions of Approval:**

##### **Road/Driveway**

1. The waiver of the right to protest an RSID/SID for improvements to Waldo Road non-motorized facilities shall be revised to state the following:

"Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future RSID/SID based on benefit, for upgrading the streets within the subdivision, including, but not limited to, paving, curbs and gutters, non-motorized facilities, street widening and drainage facilities." *Subdivision Regulations Article 3-2(3)(E) and OPG recommendation.*

2. The Driveway Design section of the development covenant shall be revised to state the following:

"Dead-end driveways in excess of 150 feet in length shall have approved turnaround for fire apparatus. A turnaround shall be located within 150 feet of the building. A minimum unobstructed width of not less than 20 feet and an unobstructed vertical clearance of 13 feet 6 inches shall be provided for any driveway over 150 feet. The opening through a gate should be two feet wider than the road. Final design shall be approved through the Frenchtown Rural Fire District." *Subdivision Regulations Article 3-2(10)(E) and Frenchtown Rural Fire District recommendation.*

**Riparian Area**

3. The site map that accompanies the Riparian Resource Management Plan shall be revised to include areas of vegetation identified in the field and the No Build/No Alteration Zone on the plat shall be expanded to include an adequate buffer around these areas of vegetation. The amended Riparian Resource Management Plan shall be subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-13(2), 5-3(5)(F) and OPG recommendation.*

**Fire Protection**

4. Final plans for provision of a water supply for fire fighting shall be reviewed and approved by the Frenchtown Rural Fire District and County Public Works prior to final plat approval. *Subdivision Regulations Article 3-7(1) and Frenchtown Rural Fire District recommendation.*

**Floodplain**

5. The following provisions shall be added to the development covenant: "The developer or purchasers of the lots shall maintain a minimum 100 foot dwelling setback from O'Keefe Creek." The plat shall delineate all locations within 100 feet of O'Keefe Creek that are not contained in the No Build/No Alteration Zone as a No Build Zone. These revisions shall be reviewed and approved by OPG prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B), 4-1(12), Floodplain Administrator and OPG recommendation.*
6. The following provisions shall be added to the plat: "In order to mitigate the risk of flooding, all structures inhabited by human beings shall be constructed with their finished floor and all mechanical duct work at or above an elevation 105.00. The elevation is based on the top of the well cap on the existing well on the property. The elevation of the well cap is 103.90. Additionally, no basements will be allowed below the finished floor elevations." *Subdivision Regulations Article 3-1(1)(B), 4-1(12), Floodplain Administrator and OPG recommendation.*
7. The design engineer and the property owner shall indemnify, hold harmless and defend Missoula County, its agents and employees from any loss, cost or claim that may arise out of the County's approval of this subdivision based upon the engineer's certification of the required flood information. *Subdivision Regulations Article 3-1(2), Floodplain Administrator and OPG recommendation.*
8. The design engineer shall provide evidence of coverage by errors and omissions insurance prior to final plat approval. *Subdivision Regulations Article 3-1(2), Floodplain Administrator and OPG recommendation.*

**Weeds**

9. A Revegetation Plan shall be reviewed and approved by the Missoula County Weed District prior to final plat approval and this plan shall be included as an attachment to the development covenant. *Subdivision Regulations Article 3-1(1)(B), County Weed District and OPG recommendation.*

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

**Site Inspection**

Following the Public Meeting, Commissioner Carey accompanied Chuck Wright, Assistant Public Works Director, on a site inspection of Remount Road in the 9-Mile area, for the request to alter the road.

**THURSDAY, APRIL 29, 2004**

The Board of County Commissioners met in regular session; all three members were present. During the day, Commissioner Curtiss participated in the Health Emergency Tabletop Exercise held at St. Patrick Hospital. Later in the afternoon, Commissioners Carey and Curtiss attended the TDM Congress held at the Doubletree, with Commissioner Curtiss giving the welcome to the attendees.

**Claims List** – The Commissioners signed the Claims List, dated April 27, 2004, with a grand total of \$89,361.71. The Claims List was returned to the Accounting Department.

**Claims Lists** – The Commissioners signed four (4) Claims Lists, dated April 28, 2004, with the following grand totals:

- 1) \$13,265.46;
- 2) \$7.00;
- 3) \$228,658.13; and
- 4) \$116,964.18.

The Claims Lists were returned to the Accounting Department.

**Indemnity Bond** – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Cynthia Tucker Johnson, Missoula, as Principal for Missoula County Public Schools Warrant #119012, issued December 6, 2002 on the MCPS Payroll Fund in the amount of \$198.03 (for wages), which cannot be found.

**ADMINISTRATIVE MEETING**

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

**Extension Request** – Per recommendation of the Office of Planning and Grants at their Planning Status meeting on April 29, 2004, the Commissioners approved and signed a letter (dated April 29, 2004) to Brenda Rankin, Territorial Engineering & Surveying, approving her request for a three-year extension of the final plat approval deadline for the West End Industrial Development. The new deadline will be March 3, 2007.



Budget Transfer – The Commissioners approved and signed a Request for Budget Transfer, dated April 29, 2004 from the Clerk of District Court, for the transfer of \$3,100.00 from Jury/Witness Fees to Personnel to allow for a short-term hire from May 3 – June 30, 2004.

Agreement – Approved at their April 28, 2004 Public Meeting, the Commissioners signed a Site Access Agreement between Missoula County and Mountain Water Company ("MWC") for MWC's installation, maintenance and operation of groundwater monitoring wells at Hellgate Park. The wells will be drilled as part of a research project conducted by the University of Montana Geology Department to collect data on water levels and water quality. The wells will be drilled at the end of April 2004. All other terms and conditions are set forth therein.

Other items included:

- 1) The Commissioners reviewed a Counter Offer from the JTL Group for Reserve Parcel "C", Missoula Development Park. The BCC sent back the offer to the Offer Review Committee (for a tentative review date of May 11, 2004) because of new information regarding the potential settling of the sewer line across the property.
- 2) The Commissioners approved a FY05 enhancement request in the amount of \$10,661.00 for a new copier for the Western Montana Fair, as the old copier is no longer operational. This purchase will be managed through the Central Services copier pool, taking advantage of the cost savings and replacement schedule of the CIP.

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

**FRIDAY, APRIL 30, 2004**

The Board of County Commissioners met in regular session; a quorum of members was present. In the morning, Commissioner Curtiss gave the welcome at the Daughters of the American Revolution State Conference being held at the Doubletree. At noon, Commissioner Curtiss attended the Aging Services Advisory Council Luncheon Meeting held at the Children's Theatre. Commissioner Evans was out of the office all day.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated April 26, 2004, with a grand total of \$10,903.48. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtis signed two (2) Claims Lists, dated April 28, 2004, with the following grand totals:

- 1) \$1,022.74; and
- 2) \$586.25.

The Claims Lists were returned to the Accounting Department.

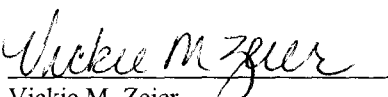
Claims List – Commissioners Carey and Curtiss signed the Claims List, dated April 29, 2004, with a grand total of \$123,335.95. The Claims List was returned to the Accounting Department.

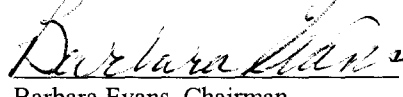
Claims List – Commissioners Carey and Curtiss signed the Claims List, dated April 30, 2004, with a grand total of \$53,937.00. The Claims List was returned to the Accounting Department.

Plat and Agreements – The Commissioners signed the Plat, Development Covenant, and Subdivision Improvements Agreement and Guarantee for Mahlum Meadows, a subdivision located in the NW¼ of Section 21, T 14 N, R 20 W, PMM, Missoula County, a total gross and net area of 15.15 acres, with the owner of record being Jelly Stone Parks of Montana, LLC. The Development Covenant, dated April 30, 2004 sets forth Conditions of Approval regarding 1) home construction restrictions above a certain elevation; and 2) provision for a home on Lot 14. The Improvements Agreement, dated March 17, 2004 relates to asphalt and gravel, sewer issues, signage, construction issues, soil density, and mailbox cluster. Said improvements shall be completed no later than March 10, 2005. The estimated costs are \$186,500.00, and have been guaranteed by a Letter of Credit from First Security Bank of Missoula.

Signature Page – The Commissioners reviewed and signed one (1) Claims Signature Page for the Larchmont Golf Course Accounts Payable Invoice Register dated April 29, 2004, in the amount of \$44,814.29. The Signature Page was returned to the County Auditor.

Agreement – Commissioner Curtiss signed three copies of the 2003 Supportive Housing Program Renewal Grant Agreement between the United States Department of Housing and Urban Development ("HUD") and Missoula County for Project No. MT01B300006, authorized by the McKinney-Vento Homeless Assistance Act. This agreement is for the YWCA's Ada Feldman transitional housing project. The total amount of the grant is \$25,807.00; the term is for one year, beginning May 1, 2004. All other terms and conditions are set forth therein. The document was returned to Kristina Swanson in the Office of Planning and Grants for further signatures and handling.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, MAY 3, 2004**

The Board of County Commissioners did not meet in regular session. Commissioners Carey and Curtiss traveled to Polson to attend a MACo District 10 & 11 Counties Meeting. Commissioner Evans was out of the office all day.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated April 30, 2004, with a grand total of \$44,887.93. The Claims List was returned to the Accounting Department.

**TUESDAY, MAY 4, 2004**

The Board of County Commissioners met in regular session; a quorum of members was present in the forenoon. Commissioner Carey left for Bloomington, MN where he will attend a Senior Cooperative Housing Conference through Friday, May 7<sup>th</sup>. Commissioner Curtiss was out all afternoon.

Claims Lists – Commissioners Curtiss and Evans signed two (2) Claims Lists, dated April 30, 2004, with the following grand totals:

- 1) \$10,471.59; and
- 2) \$4,650.00.

The Claims Lists were returned to the Accounting Department.

Claims List – Commissioners Curtiss and Evans signed the Claims List, dated May 3, 2004, with a grand total of \$284,694.27. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Curtiss and Evans signed the Claims List, dated May 4, 2004, with a grand total of \$49,088.65. The Claims List was returned to the Accounting Department.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Shirley E. Faust, for the month ending April 30, 2004.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending April 30, 2004.

**ADMINISTRATIVE MEETING**

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

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 09 – CY2004 - Pay Date: April 30, 2004. Total Missoula County Payroll: \$907,726.34. The Transmittal Sheet was returned to the Auditor's Office.

Resolution No. 2004-063 – The Commissioners signed Resolution No. 2004-063, dated May 4, 2004, a Budget Amendment for the Office of Planning and Grants reflecting the removal of amounts (totaling \$1,000,000) of the EPA Brownfields Cleanup Grant from the County accounting system, as the City of Missoula will now administer the Grant. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Resolution No. 2004-064 – The Commissioners signed Resolution No. 2004-064, dated May 4, 2004, a Budget Amendment for the Health Department reflecting \$5,000 in HAVA (Help America Vote Act) funds received. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Agreement – The Commissioners, for the Missoula County Airport Industrial District, signed an Agreement permitting Wesmont Builders and Developers (for Canyon Creek Village) to use a 20 foot utility easement within Park 10 and the 15 foot landscape easement along the easternmost boundary of Lots 8 & 9, Block 12, Missoula Development Park (Phase 5). All other terms and conditions are set forth therein. The document was returned to Barb Martens in the Projects Office for further handling.

Request for Action – The Commissioners approved a request from Financial Services to pursue a five-year audit contract with Elmore & Associates. Negotiations will be performed in conjunction with current budget restrictions and the FY2005 budget process. The document was returned to Dale Bickell, Chief Financial Officer.

**Deed Restriction Agreement and Subordinate Deed of Trust**

Chairman Evans signed a Deed Restriction Agreement and Subordinate Deed of Trust, dated April 20, 2004, between Missoula County and Becky S. and Thomas F. Catmull, in the amount of \$24,500.00 for property located at 920 Defoe Street, Missoula, Montana, for the purpose of providing HOME Investment in Affordable Housing Program funds to assist with down payment, closing cost and, if necessary, mortgage reduction assistance, as per the terms and conditions set forth therein. The documents were returned to Jenifer Blumberg in the Office of Planning and Grants for further handling.

Modification Request – Per recommendation of the Office of Planning and Grants at their Planning Status meeting on May 4, 2004, the Commissioners approved and signed a letter (dated May 6, 2004) to Nick Kaufman, WGM Group, Inc., approving his request for a modification of the Windsor Park Subdivision final plat and phasing plan, as well as variance requests from the requirements for boulevard sidewalks on a portion of Potter Park Loop, and that blocks not exceed 480 feet in length, subject to the conditions set forth therein and in the attached document entitled "Findings of Fact and Conclusions of Law."

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

**WEDNESDAY, MAY 5, 2004**

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

Claims List – Commissioners Curtiss and Evans signed the Claims List, dated May 3, 2004, with a grand total of \$55,089.89. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Curtiss and Evans signed the Claims List, dated May 4, 2004, with a grand total of \$2,058.48. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Curtiss and Evans signed the Claims List, dated May 5, 2004, with a grand total of \$9,053.02. The Claims List was returned to the Accounting Department.

Plat and Agreement – The Commissioners signed the Plat and Subdivision Improvements Agreement With Escrow for Hidden Trail – Phase 1, a residential P.U.D. subdivision located in the N½ of Section 24, T 13 N, R 19 W, PMM, Missoula County, a total area of 7.79 acres, with the owners/developers being Yawle Seven, LLC. The Improvements Agreement With Escrow, dated January 9, 2004 is between the Developer, First Interstate Bank, Missoula County (as Beneficiary), and Insured Titles (Escrow Agent). All terms and conditions are set forth therein. Montana State Law requires developer to complete the improvements within one (1) year of the approval of the subdivision plat.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending April 30, 2004.

**CHIEF ADMINISTRATIVE OFFICER MEETING**

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

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Celestine Duncan of Weed Management Services for the development of an integrated vegetation management plan for county owned/managed road rights-of-way in Missoula County. The total amount shall not exceed \$5,000.00. The term will be March 1, 2004 through July 30, 2004. All other terms and conditions are set forth therein.

Contract – The Commissioners signed an annual Professional Services Contract between Missoula County and Gregg Potter for lawn maintenance at the Historical Museum. The total amount shall not exceed \$9,000.00. The term will be April 15, 2004 through October 15, 2004. All other terms and conditions are set forth therein.

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Nick Holden of Mountain Valley Plant Management for the application of herbicides to designated Noxious Weed species (as part of the New Invaders Program). The total amount shall not exceed \$7,500.00. The term will be April 1, 2004 through November 30, 2004. All other terms and conditions are set forth therein.

Request for Action – The Commissioners approved a request from Dale Bickell, Chief Financial Officer, to raise the Missoula County Employees Flex Plan Medical Spending Account Limits from \$5,000 to \$10,000. With changes in the County's health insurance plan and rising medical costs, this higher limit provides a better benefit to the employees.

Agreement – Chairman Evans signed a Memorandum of Agreement, dated May 14, 2003, between the Missoula County Park Board (the "Board") and the Upper Linda Vista Homeowners Association – Kelsey Park for assistance with park development. The Board agrees to provide up to \$3,000 in matching funds from the Capital Matching Fund Program (Fall FY04), and must be spent by May 30, 2004. The document was returned to Lisa Moisey, County Parks Coordinator, for further handling.

**PUBLIC MEETING – May 5, 2004**

The Public Meeting was called to order at 1:30 p.m. by Commissioner Barbara Evans. Also present were Commissioner Jean Curtiss, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall and County Public Works Assistant Director Chuck Wright. Commissioner Bill Carey was attending a Senior Housing Cooperative Conference in Minnesota.

**Pledge of Allegiance**

**Public Comment**

None

**Routine Administrative Actions**

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$1,054,541.65. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

**Decision: Petition to Alter Remount Road (9-Mile Area)**

A petition has been presented to alter Remount Road located in Section 28, Township 15 North, Range 22 West, from the southern boundary of the northeast one-quarter of the northwest one-quarter of Section 28 to the northern boundary as described in Book 450 Micro Page 2001.

The reasons for the request are as follows:

1. The existing traveled road does not coincide with the position shown on Deed Exhibit #59.

The following landowners have been notified: Kenneth K. Krout, Donna M. Paige, Cora A. Krout, Harvey Millhouse, Patrick K. Paige and Lorraine Millhouse.

Professional Consultants, Inc. is doing a survey of the property that adjoins the easterly side of this section of road. In doing the survey, it was discovered that there is an old deed exhibit for that road that doesn't follow the existing traveled way. The Surveyor's Office suggested a petition be presented to the Board of County Commissioners to realign the right-of-way so that it fits the present traveled way.

The hearing on this matter was held April 28, 2004. Commissioner Bill Carey and County Public Works Assistant Director Chuck Wright conducted a site inspection on Wednesday, April 28, 2004.

Chuck Wright stated that he and Commissioner Carey conducted a site inspection last week. There is no problem with the alteration and it is in the benefit of the County to grant the petition.

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

Commissioner Curtiss moved that the Board of County Commissioners grant the petition to alter Remount Road, located in Section 28, Township 15 North, Range 22 West; from the southern boundary of the northeast one-quarter of the northwest one-quarter of Section 28; to the northern boundary as described in Book 450 Micro Page 2001. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

#### **Hearing (Certificate of Survey): Olean 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 3 of COS 1949, located in the northwest one-quarter of Section 8 and the southwest one-quarter of Section 5, Township 13 North, Range 16 West.

Timothy A. Olean has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 20 acres in size located near Bonner, Montana. Mr. Olean proposes to create one approximately ten acre parcel for transfer to his wife, Heather L. Olean, for residential purposes and keep the remaining approximately ten acre parcel for residential purposes as well.

The history of the parcel is as follows: Floyd and Anna Mae Cheff deeded parcels of land to John B. and Darlene K. Younce in May, 1991. A warranty deed was filed in April of 1996, deeding the property to Paul E. and Linda Harper, Co-Trustees of the Paul E. Harper Revocable Trust. The Harper's filed a warranty deed in July, 2001, deeding the property to Brook and Carolyn Jacksha. Brook Jacksha quit claimed the parcel to Carolyn Jacksha in June, 2003. Carolyn Jacksha, now known as Carolyn Daly, seller, has drawn up a buy-sell agreement with Tim Olean and Shawn Welchans as the buyers. This agreement was signed March 30, 2004. An addendum to the buy-sell agreement for additional provisions was signed April 8, 2004.

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act. Approval of the family transfer would be contingent upon him obtaining ownership of the parcel.

Chairman Evans opened the public hearing.

Timothy Olean stated that he now owns the property, the closing was held last week.

Chairman Evans stated that the reason Mr. Olean is present is so the Board can determine if his request is an attempt to evade the Subdivision Act. She asked Mr. Olean if he was attempting to do so.

Timothy Olean stated he was not trying to evade the Subdivision Act.

Chairman Evans asked if he really did wish to transfer this property to his wife.

Timothy Olean stated that was correct.

Commissioner Curtiss stated that Shawn Welchans was listed on the first buy-sell agreement.

Timothy Olean stated Mr. Welchans was going to lend him money to complete the purchase as he had not intended to build right away but wanted to obtain the land. He has now secured a different source of funding and Mr. Welchans is no longer involved with the transaction. He is the sole owner of the property.

Commissioner Curtiss stated that Mr. Olean planned to give one parcel to his wife. What is the planned use for that parcel.

Timothy Olean stated that is the parcel where they intend to build their house and have all financing tied to that parcel. The other 10 acres will be free and clear.

Commissioner Curtiss asked what the plans were for the other parcel.

Timothy Olean stated that, hopefully, nothing was planned. Perhaps in 10 or 20 years he might have to sell the property, but hopefully never. His neighbor is also doing a family transfer and the land surveyor said it would save them both money to do the surveys at the same time.

Commissioner Curtiss stated that he planned to build on the parcel he is giving to his wife.

Timothy Olean stated that was correct.

Commissioner Curtiss asked if his intent when he bought the property was to divide it.

Timothy Olean stated that was not necessarily his intention. He was going to hire a surveyor anyway, and after speaking with his neighbor, he decided to do everything now and save some money.

Commissioner Curtiss asked if this was for future estate planning.

Timothy Olean stated that was correct, for retirement planning or as protection if he lost his job someday, but hopefully, he would never have to sell it.

Commissioner Curtiss asked if Mr. Olean had talked to anyone in the County about subdividing.

Timothy Olean stated he had only talked to the realtor and the surveyor.

Commissioner Curtiss asked if he built or developed property as a business.

Timothy Olean stated he did not.

Commissioner Curtiss stated that the Oleans planned to build on the parcel being given to Mrs. Olean. Did counsel feel there was anything that prevented approval of this transfer?

Colleen Dowdall stated she did not see a problem with building on the parcel given to Mrs. Olean. However, if Mrs. Olean deeds part of the property back to Mr. Olean immediately, that would be evidence of an attempt to evade. That is one of the criteria for the Commissioners to weigh before they make their decision. She asked Mr. Olean who his surveyor was.

Timothy Olean stated the surveyor was Ken Jenkins.

Colleen Dowdall asked who his neighbor was.

Timothy Olean stated it was Mark Cheff, but he just submitted his paperwork so he does not have a hearing date set yet.

Commissioner Curtiss stated she was confused if this meets the intent of the law, which allows a person to give property to children, parents or a spouse that would benefit them. This seems like it would benefit Mr. Olean, because he is not building on the parcel he is keeping.

Timothy Olean stated the parcel being given to his wife is a better building site. This is the process he was instructed to use.

Chairman Evans stated that she believes Mr. Olean has the right to give his wife a piece of land, one time, per County. She did not see a reason to believe he was trying to evade the Subdivision Act and would support the request.

Commissioner Curtiss moved that the Board of County Commissioners approve the request by Timothy A. Olean to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Chairman Evans seconded the motion.

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

The motion carried on a vote of 2-0.

Chairman Evans stated this has not been reviewed for access or other criteria. This is just permission to divide the property, it does not give Health Department approval, zoning compliance and no guarantee of access or anything else. He will receive a letter confirming this action.

#### **Hearing (Certificate of Survey): Micheletto Family Transfer**

Chairman Evans stated the property involved in this request originally belonged to her sister and former brother-in-law, back in 1975. She asked counsel if this created a conflict of interest.

Mike Sehestedt stated it did not create a conflict of interest.

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 No. 1 of Elk Meadows Ranchettes, as shown on Certificate of Survey Number 351, located in the west one-half of Section 13, Township 15 North, Range 22 West.

Thomas A. Micheletto has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 11.61 acres in size located near Huson, Montana. Mr.

Micheletto proposes to create one approximately 6.1 acre parcel for transfer to his wife, Loni R. Frasch, for residential purposes and keep the remaining approximately 5.5 acre parcel for residential purposes as well.

The history of the parcel is as follows: Richard H. and Billie I. Williams and Royal J. and Margaret D. McMurdie sold the parcel to Richard W. and Janet L. Swartz in September, 1975. In November of 1981, Mr. and Mrs. Richard Swartz deeded the parcel to Frank Wilton. The parcel was then deeded to Ernest W. Johnson in January, 1993. A Warranty Deed was filed in May, 1996, deeding the parcel to Thomas A. Micheletto and Loni R. Frasch. A quit claim deed was filed in April 3, 2004, deeding the parcel to Thomas A. Micheletto.

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

Chairman Evans opened the public hearing.

Tom Micheletto stated that he wanted to split the land and give a parcel to his wife for their eventual retirement. Within the next 5 or 6 years, he would like to build another house and sell the other house. It will take that long, because the money is all coming out of pocket.

Commissioner Curtiss stated the intended use of the parcel is to build another home in the future.

Tom Micheletto stated that was correct.

Commissioner Curtiss asked if he would be building on the parcel that will be in his wife's name.

Tom Micheletto stated that was correct.

Commissioner Curtiss asked if Mr. Micheletto was a builder or developer.

Tom Micheletto stated he is a carpenter, working for Quality Construction. He is not a contractor.

Commissioner Curtiss stated that the law prohibits family transfers within platted subdivisions. There was some discussion as to whether or not the Elk Meadows Ranchettes was a platted subdivision.

Mike Sehestedt stated this is a tract development. In the past, parcels 10 acres or larger were exempt from subdivision review. Just before the law changed to a minimum of 20 acres, many developments were surveyed into tracts, all of which were larger than 10 acres. Elk Meadows Ranchettes falls in that category.

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

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

Chairman Evans stated this has not been reviewed for access or other criteria. This is just permission to divide the property, it does not give Health Department approval, zoning compliance and no guarantee of access or anything else. He will receive a letter confirming this action.

#### **Hearing: Petition to Create East Frenchtown Water District**

Mike Sehestedt presented the staff report.

This is a hearing on a Petition to Create a Missoula County Water District. A petition has been received by the Elections office to create the East Frenchtown Water District and conduct the Election of District Directors.

The petition has been checked and verified. The Clerk and Records Office has examined the petition to create the proposed East Frenchtown Water District and has found that it contains two valid signatures of registered voters within the district. Two voters are eligible to vote in that district. 100% of the registered voters of the district have signed the petition, thereby meeting the requirements of MCA 7-13-2204.

This request is for the Hawthorn Springs Subdivision to satisfy a condition of approval. Where a community water system is being proposed, the Health Department is requiring creation of some governmental mechanism to see to the operation and maintenance of the water system. The policy preferred is to create a County Water District, which is an independent unit of local government; they borrow their own money and elect their own officers. The interaction with the County is to collect taxes for them and the County may conduct their elections. If the Board chooses to go forward, a date will be set for an election on the creation of the district, which may be combined with the election of directors. The preferred option is a mail ballot.

The areas to be included in the East Frenchtown Water District are described as follows:

**Parcel 1:** A tract of land located in the SW 1/4 of Section 6, Township 14 North, Range 20 West, P.M.M., Missoula County, Montana, being more particularly described as Tract 1 of Certificate of Survey No. 352.

**Parcel 2:** A tract of land located in the SW 1/4 of Section 6, Township 14 North, Range 20 West, P.M.M., Missoula County, Montana, being more particularly described as Tract 2 of Certificate of Survey No. 352.

**Parcel 3:** A tract of land located in the SW 1/4 of Section 6, Township 14 North, Range 20 West, P.M.M., Missoula County, Montana, being more particularly described as Tract 3 of Certificate of Survey No. 352.

- Parcel 4A:** A tract of land located in the N 1/2 S 1/2 of Section 6, Township 14 North, Range 20 West, P.M.M., Missoula County, Montana, being more particularly described as Tract 4A of Certificate of Survey No. 5451.
- Parcel 5A:** A tract of land located in the S 1/2 N 1/2 of Section 6, Township 14 North, Range 20 West, P.M.M., Missoula County, Montana, being more particularly described as Tract 5A of Certificate of Survey No. 5451.
- Parcel 6:** A tract of land located in the S 1/2 N 1/2 of Section 6, Township 14 North, Range 20 West, P.M.M., Missoula County, Montana, being more particularly described as Tract 6 of Certificate of Survey No. 352.
- Parcel 7:** A tract of land located in the Section 6, Township 14 North, Range 20 West, P.M.M., Missoula County, Montana, being more particularly described as that 49.06 acre tract shown on Certificate of Survey No. 352.
- Parcel 8:** A tract of land located in Section 6, Township 14 North, Range 20 West, P.M.M., Missoula County, Montana, being more particularly described as that 99.63 acre tract shown on Certificate of Survey No. 352.
- Parcel 9:** All that part of the NE 1/4 NE 1/4 of Section 12, Township 14 North, Range 21 West, P.M.M., Missoula County, Montana, lying east of the Highway Right-of-Way described in Book 135 of Deeds at Page 245.
- Parcel 10:** Tract 1 of Certificate of Survey No. 358, located in the southeast one-quarter of Section 1, Township 14 North, Range 21 West, Principal Meridian, Montana, Missoula County, Montana.

Chairman Evans opened the public hearing.

Kirby Christian, attorney for the owners, stated he was available to answer any questions the Board may have.

Mike Sehestedt stated the Board's action is to submit the creation of the district as described to the electors. The Board's discretion is to decide whether to include more or less property than is petitioned for.

Commissioner Curtiss stated that when this subdivision was approved, there was some discussion about other folks in the area being allowed to get water from this system.

Kirby Christian stated that the owners would prefer to create the district as defined by the subdivision boundary. If others want to join the district in the future, they can make that request to the district's Board of Directors.

Mike Sehestedt stated there is a procedure for subsequent additions to the district.

Kirby Christian stated that the conservation land was not included in the district when this was initially proposed. The owners want to include that land and asked if that could be done today.

Mike Sehestedt stated that could be done today. The Commissioners could extend the boundaries as the conservation land would benefit equally from being included in the district.

Kirby Christian stated he would like to do that, it would include the 160 acres immediately north of this property, owned by the same people. He would update the legal description. There are no tract numbers assigned as the subdivision has not been platted yet.

Mike Sehestedt stated that the legal description is COS 376 located in the southwest one-quarter of Section 31, Township 15 North, Range 20 West, Rocky Mountain Elk Foundation Conservation Easement. The first motion would be to amend the boundaries of the requested water district.

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

Commissioner Curtiss moved that the Board of County Commissioners amend the boundaries of the requested water district to include the conservation easement associated with Hawthorn Springs, more particularly described as the southwest one-quarter of Section 31, Township 15 North, Range 20 West, currently covered by a potential conservation easement in favor of the Rocky Mountain Elk Foundation. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners submit the creation of the East Frenchtown Water District, as amended, together with the Election of District Directors to the voters and authorize the Deputy County Attorney to prepare a resolution to that effect. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

**Hearing: Petition to Annex Property into the Missoula Rural Fire District (Lots 1-9 of Evans Ridge**

Mike Sehestedt presented the staff report.

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 annexed and a majority of tax-paying freeholders within the area described, thereby meeting the requirements of 7-33-2125 MCA for annexation of adjacent territory.

The area to be annexed is described as follows:



"Lots 1 through 9 of Evans Ridge, in the County of Missoula, recorded in Book 22 of Plats 36." (See map for complete legal description).

A letter from the Missoula Rural Fire District Board of Trustees is included indicating their approval of the petition for annexation.

Commissioner Curtiss stated these homes were to have installed sprinkler systems and did not. These homes are now connected to a water supply for fire fighting purposes with another source.

Colleen Dowdall stated that was the case and the boundary was not within a the Fire District. Part of resolution of the problem was for them to petition into the district.

Chairman Evans stated she has no relationship with Evans Ridge.

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

Commissioner Curtiss moved that the Board of County Commissioners approve the petition to annex Lots 1 through 9 of Evans Ridge, in the County of Missoula, recorded in Book 22 of Plats 36, into the Missoula Rural Fire District. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

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

#### THURSDAY, MAY 6, 2004

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.

Claims List – Commissioners Curtiss and Evans signed the Claims List, dated May 4, 2004, with a grand total of \$5,655.22. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Curtiss and Evans signed three (3) Claims Lists, dated May 5, 2004, with the following grand totals:

- 1) \$6,526.14;
- 2) \$6,388.53; and
- 3) \$6,019.84.

The Claims Lists were returned to the Accounting Department.

Claims Lists – Commissioners Curtiss and Evans signed three (3) Claims Lists, dated May 6, 2004, with the following grand totals:

- 1) \$3,700.00;
- 2) \$6,749.78; and
- 3) \$728.40.

The Claims Lists were returned to the Accounting Department.

Indemnity Bond – Acting Chairman Curtiss examined, approved, and ordered filed an Indemnity Bond naming Shopko #75, Missoula, as Principal for Missoula County Public Schools Warrant #99164, issued December 5, 2003 on the Missoula County Student Fund in the amount of \$79.26 (for an inflatable bed and sheets), which cannot be found.

Indemnity Bond – Acting Chairman Curtiss examined, approved, and ordered filed an Indemnity Bond naming Shopko #75, Missoula, as Principal for Missoula County Public Schools Warrant #99593, issued December 11, 2003 on the Missoula County Student Fund in the amount of \$61.48 (for a coat and calculators), which cannot be found.

Indemnity Bond – Acting Chairman Curtiss examined, approved, and ordered filed an Indemnity Bond naming Shopko #75, Missoula, as Principal for Missoula County Public Schools Warrant #99527, issued December 11, 2003 on the Missoula County General Fund in the amount of \$115.54 (for Magnavox DVD players), which cannot be found.

Indemnity Bond – Acting Chairman Curtiss examined, approved, and ordered filed an Indemnity Bond naming Shopko #75, Missoula, as Principal for Missoula County Public Schools Warrant #99416, issued December 10, 2003 on the Missoula County Student Fund in the amount of \$107.93 (for detergent, bleach, candy canes), which cannot be found.

Replacement Warrant – Acting Chairman Curtiss examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Angela Marie Swanson, Potomac, as applicant for Clerk of District Court Warrant #19061, issued April 13, 2004 on the Missoula County Trust Fund in the amount of \$411.00 (for Child Support Case #DR01-355), which was not received in the mail. No bond of indemnity is required.

#### ADMINISTRATIVE MEETING

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

Letter – The Commissioners signed a letter, dated May 5, 2004 to Dale Bosworth, Chief Officer of the U.S.D.A. Forest Service, Washington, D.C., supporting Neptune Aviation Services, Inc. and the continuance of the heavy airtanker program for fighting forest fires. The Commissioners feel that the NTSB's recent recommendation to terminate the heavy airtanker program is an unjust indictment of the entire industry.

Agreement – Chairman Evans signed a Professional Services Agreement, dated April 15, 2004 between the Missoula County Parks Office and Land & Water Consulting, Inc., allowing them to proceed with the Phase I Environmental

Site Assessment for land in Clinton owned by Five Valleys Land Trust, which been offered as gift to Missoula County Parks. The approximately 20 acres of floodplain/riparian land in Clinton is located adjacent to the Clark Fork River. The intended use of the land will be a conservation park, with limited uses. The total amount shall not exceed \$1,400.00. All other terms and conditions are set forth therein. The document was returned to Lisa Moisey, Parks Coordinator, for further handling.

Resolution No. 2004-065 – The Commissioners signed Resolution No. 2004-065, dated May 6, 2004, a Budget Amendment for the Public Works (Road and Bridge Funds) Department reflecting revenues of \$3,640 from fees established by County Resolution #2004-060, dated April 22, 2004. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Amendment – The Commissioners signed an Amendment, dated May 4, 2004 to the Professional Services Contract between Missoula County (Health Department) and the Collaboration Institute, Helena, amending the following: 1) to provide individual coaching and team building services to Health Services Division managers; 2) to extend the completion date to March 31, 2005; 3) to increase compensation to allow a maximum of \$15,000 and reduce the facilitators for Health services work to one; and 4) "Other payments" is amended to allow a maximum of \$2,500. The total amount shall not exceed \$1,400.00.

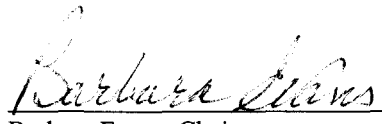
INTERCAP Documents – Chairman Evans signed an INTERCAP Revolving Program Agreement, dated May 14, 2004 between the Board of Investments of the State of Montana and Missoula County, as Borrower. Chairman Evans also signed Resolution No. 2004-066, dated May 6, 2004, reflecting an amount of \$348,677.00, representing financing for fleet trucks for the Public Works Department. The term over which the Loan Advance is to be amortized is May 14, 2004 through August 15, 2009 (5 years).

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

**FRIDAY, MAY 7, 2004**

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

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, MAY 10, 2004**

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 Curtiss signed the Claims List, dated May 7, 2004, with a grand total of \$11,117.82. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtiss signed two (2) Claims Lists, dated May 10, 2004, with the following grand totals:

- 1) \$57,994.75; and
- 2) \$37,193.51.

The Claims Lists were returned to the Accounting Department.

Plat and Agreement – The Commissioners signed the Plat and Subdivision Improvements Agreement and Guarantee for Windsor Park, Phase I, a subdivision located in the NW¼ of Section 6, T 13 N, R 19 W, PMM, Missoula County, a total area of 6.79 acres, with the owners of record being B&E Corp. (Lot 2), and B.V.W. Family Limited Partnership (Lot 3). The Improvements Agreement relates to items as described in the Summary for the subdivision guarantee, attached as Exhibit "A." Said improvements shall be completed no later than May 10, 2005. The estimated costs are \$826,500.00, and have been guaranteed by a Letter of Credit from First Security Bank.

**TUESDAY, MAY 11, 2004**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans traveled to Seeley Lake to attend the Forest Service Chief's Review held at the Double Arrow Lodge.

Election Canvass

In the forenoon, Commissioners Carey and Curtiss, and Clerk and Court Shirley Faust canvassed the School Election which was held on May 4, 2004.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated May 7, 2004, with a grand total of \$8,923.36. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtiss signed four (4) Claims Lists, dated May 10, 2004, with the following grand totals:

- 1) \$31,240.32;
- 2) \$10,091.30;
- 3) \$32,831.46; and
- 4) \$32,358.68.

The Claims Lists were returned to the Accounting Department.

Proclamation – The Commissioners and Mayor Mike Kadas signed a Proclamation declaring June 8, 2004 as *UM Retirees' Day*, and inviting all citizens to join in recognizing the University Retirees and the contributions made by these individuals to the lives of all students and the well being of society.

**WEDNESDAY, MAY 12, 2004**

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

Claims Lists – Commissioners Carey and Curtiss signed three (3) Claims Lists, dated May 11, 2004, with the following grand totals:

- 1) \$8,282.51;
- 2) \$8,364.38; and
- 3) \$26,742.64.

The Claims Lists were returned to the Accounting Department.

CHIEF ADMINISTRATIVE OFFICER MEETING

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

Letter and Grant Application – The Commissioners signed a letter, dated May 11, 2004 to the Renewable Resource Grant Administrator, Montana Department of Natural Resource (“DNRC”) – Resource Development Bureau, Helena, offering their full support to the proposed Grant Creek Restoration and Flood Mitigation Project. This project will be beneficial for flood prevention for homeowners in the Mullan Trail subdivision and it will have the additional benefits of a restored stream that allows passage of native cutthroat trout to upstream spawning habitat. Chairman Evans also signed a DNRC Grant Application, dated May 12, 2004 relative to the aforementioned Grant Creek project. The documents were returned to Public Works Director Greg Robertson for further handling.

Agreement – The Commissioners signed a Memorandum of Agreement, dated July 1, 2003 between Missoula County and the Western Montana Mental Health Center/Turning Point for chemical dependency treatment services to Missoula County residents who are indigent. The total amount shall not exceed \$82,714, which is funded by Earmarked Alcohol Tax Dollars. The term will be July 1, 2003 through June 30, 2004. (There was a delay executing contracts this year because OPG was waiting for instruction from the State DPHHS about using the tax dollars for Medicaid match; the State will not use the tax funds in this manner in FY 2004.) All other terms and conditions are set forth therein.

Resolution No. 2004-067 – The Commissioners signed Resolution No. 2004-067, dated May 12, 2004, a Budget Amendment for the Clerk of Court reflecting a \$5,586 transfer from Court Education Trust. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Resolution No. 2004-068 – The Commissioners signed Resolution No. 2004-068, dated May 12, 2004, a Budget Amendment for the Health Department reflecting a \$500 grant received for improving immunization rates in long term care facilities. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Resolution No. 2004-069 – The Commissioners signed Resolution No. 2004-069, dated May 12, 2004, a Budget Amendment for the Health Department reflecting \$22,500 in reinstated DUI Enforcement funds. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Agreements – The Commissioners signed two (2) Sanitary Sewer Grant Program Agreements for Assistance to Owner-Occupied Households Secured by Real Property, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. The Agreements provide funds for sewer improvements and connection to the City of Missoula municipal sewer system, as follows:

- 1) Agreement for Full Assistance dated April 29, 2004, with Teri Sommers, 106 Sommers Street; and
- 2) Agreement for Partial Assistance dated May 5, 2004, with Murvin B. and Joyce M. Rickel, 28 Canyon View Drive.

All sewer development fees and on-site connection costs and fees are as set forth therein.

Contract – The Commissioners signed a Professional Services Contract between Missoula County and the Yellowstone City-County Health Department for the continuation of a public, patient and clinical provider education campaign about antibiotic resistance using print and electronic materials already developed and in use. The total amount shall not exceed up to \$9,000.00, depending on close-out costs with the Missoula project. The term will be May 1, 2004 through June 30, 2004. All other terms and conditions are set forth therein. The document was returned to the Health Department for further handling.

Resolution No. 2004-070 – Chairman Evans signed Bond Resolution No. 2004-070, dated May 12, 2004 relating to financing of Missoula Development Park – Phase 3B to construct the extension of west Harrier in the amount of \$331,074.00. County Clerk and Recorder Vickie M. Zeier signed a Certificate as to Resolution and Adopting Vote.

Contract – Chairman Evans signed a Water Main Extension Contract between Missoula County and Mountain Water Company to extend the water main into Phase 3B (West Harrier), Missoula Development Park (and also provides a water service line to LaLonde Ranch). The total amount is estimated to be \$93,365.00. The work will be completed by August 1, 2004. All other terms and conditions are set forth therein. The document was returned to the Projects Office for further handling.

Agreement Exhibit – Chairman Evans signed an on-going Exhibit A, Financial and Operating Plan (under the provisions of Cooperative Law Enforcement Agreement #01-LE-11011600-016 of May 15, 2001) between the Missoula County Sheriff's Department and the United States Department of Agriculture, for patrolling activities in the Lolo National Forest. The total amount shall not exceed \$26,000.00. The term will be May 15, 2004 through December 31, 2004. All other terms and conditions are set forth therein. The document was returned to Dave Ball in the Sheriff's Department for further signatures and handling.

Request for Action – The Commissioners approved and authorized the Fair Manager to execute the Contract with Paradigm for the Ice Rink Renovation at the Missoula County Fairgrounds. (The bid was awarded by the Commissioners, but the Contract has a signature line only for the Fair Manager.) The document was returned to Deputy County Attorney Mike Sehestedt for further handling.

Request for Action – The Commissioners approved a policy change to amend the Missoula County Personnel Policies adopted by Resolution No. 2003-002 on January 14, 2003. The change relates to (proposed) special duty compensation for employees, as set forth therein.

Other items included:

- 1) The Commissioners reappointed Margaret Sample to a citizen position on the County Compensation Committee; Ms. Sample's term is for two years.

Tax Abatement Requests – At the Clerk & Recorder's Departmental Meeting with Vickie Zeier, held on May 12, 2004 the Commissioners approved requests and/or letters regarding the following:

- 1) To deny a request from Sara M. Simkowitz, Missoula, to refund permanent fees paid on vehicle for Title ID #W793805; and
- 2) To approve a request from Donald Skillicorn, Greenough, to refund permanent fees paid in error on vehicle for Title ID #W776850;

#### **PUBLIC MEETING – May 12, 2004**

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Bill Carey. Also present were Commissioner Jean Curtiss, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall, County RSID Coordinator Jesse Sattley and County Public Works Director Greg Robertson. Commissioner Barbara Evans was on a conference call with Washington, D.C.

#### **Pledge of Allegiance**

#### **Public Comment**

None

#### **Routine Administrative Actions**

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$355,998.53. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

#### **Bid Award: Missoula Development Park Phase 3B (Sewer Main Extension and Street Construction)**

Greg Robertson presented the staff report.

The Invitation to Bid was advertised in the Missoulian to construct the extension of West Harrier infrastructure for Phase 3B, Missoula Development Park. Three bids were received with the following results:

Bidder	Schedule I	Schedule II	Total Bid
Triple A Construction	\$90,730.00	\$182,347.50	\$273,077.50
JTL Group	\$64,235.00	\$148,792.00	\$213,027.00
Nelcon	\$59,845.00	\$214,924.00	\$274,769.00

Schedule I is to construct approximately 830 linear feet of 8 inch diameter sewer main, manholes, sewer service lines, septic tank abandonment and appurtenances. Schedule II is to construct approximately 835 linear feet of street to include saw cutting demolition, concrete cove gutter, curb and gutters, sidewalk, fencing, Portland cement concrete pavement and asphalt concrete pavement for Phase 3B, Missoula Development Park.

The apparent low bid is from JTL Group in the amount of \$213,027.00. The engineers estimate was \$300,000. The evaluation of the bid form and bond found everything to be in order and it is recommended the bid be awarded to JTL Group.

Commissioner Curtiss moved that the Board of County Commissioners approve awarding the bid for extension of West Harrier infrastructure for Phase 3B, Missoula Development Park (Schedule I and II), to JTL Group in the amount of \$213,027.00, as the lowest and best bid. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

**Hearing (Certificate of Survey): Haveman Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as a tract of land being located in the east one-half of the northeast one-quarter of the southeast one-quarter of Section 18, Township 18 North, Range 15 West.

Justin Haveman has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately twenty acres in size located near Seeley Lake, Montana. Mr. Haveman proposes to create one approximately five acre parcel for transfer to his wife, Shaune M. Haveman, for residential purposes and keep the remaining approximately fifteen acre parcel for residential purposes as well.

The history of the parcel is as follows: Edward H. and Betty Jo Townsend sold this parcel of land to Herbert and Elta Townsend in May of 1988. A warranty deed was filed in June of 1988, deeding the parcel of land to Howard J. and Judith A. Haveman. Howard filed a warranty deed in July, 2003, deeding the parcel to Justin Haveman.

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

Justin Haveman was present and came forward to answer any questions the Board may have.

Commissioner Curtiss stated the Board has the responsibility to make sure people are not trying to evade the Subdivision Act and they have a few questions they need to ask. She asked if Mr. Haveman is planning to develop this property.

Justin Haveman stated he was not.

Commissioner Curtiss asked what the reason was for giving his wife this property.

Justin Haveman stated that it is just in case he would have to sell it someday. He purchased this property and moved to Missoula but was not able to find work so he is working in Big Fork again. He does not know what the future holds and he would like to be able to keep a piece of this property if something should happen.

Commissioner Curtiss stated that if the property in his wife's name is sold, the profits need to be for the benefit of his wife.

Justin Haveman stated he understood that. There are no plans to sell, until he can get everything figured out. Their home is on the 15 acre parcel that he is retaining.

Colleen Dowdall asked what kind of business Mr. Haveman was in.

Justin Haveman stated he was in the logging business.

Colleen Dowdall asked if he lived on the 15 acres.

Justin Haveman stated he did, part time because he is working in Big Fork.

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

Commissioner Curtiss moved that the Board of County Commissioners approve the request by Justin Haveman to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Acting Chair Carey stated that Mr. Haveman would get a letter confirming today's action. However, this has not been reviewed for access or other criteria. This is just permission to divide the property; it does not give Health Department approval, zoning compliance and no guarantee of access or anything else.

**Hearing (Certificate of Survey): Scott Waldron Family Transfer**

Acting Chair 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 as a parcel of land located in the southeast one-quarter of the southwest one-quarter of Section 14, Township 15 North, Range 22 West, P.M.M., Book 233 of Micro Records, Page 585.

G. Scott and Alice H. Waldron have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 3.64 acres in size located near Huson, Montana. Scott and Alice propose to create one approximately two acre parcel for transfer to their children, Matthew

Waldron, age 28, Nathan Waldron, age 27, Alysha Waldron, age 23 and Brant Waldron, age 21, for residential purposes and keep the remaining approximately 1.64 acre parcel for residential purposes as well.

The history of the parcel is as follows: Arthur and Juanita Scheffer deeded 3.64 acres to Douglas and Dorothy Jette in July, 1966. In November 1986, the Jette's entered into a written agreement for the sale of the 3.64 acres to Alice Waldron. Alice Waldron filed a quit claim deed in 2002 unto herself and Scott Waldron.

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

Scott Waldron was present and came forward to answer any questions the Board may have.

Commissioner Curtiss stated that Mr. Waldron was giving this parcel to all the children.

Scott Waldron stated that the plan keeps changing, but currently it looks like one of the children may build there and buy the others out. He is not trying to evade subdivision review.

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

Commissioner Curtiss moved that the Board of County Commissioners approve the request by G. Scott and Alice Waldron to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

#### **Hearing (Certificate of Survey): Mark Cheff Family Transfer**

Acting Chair 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 as Tract 2 of COS 1949, located in the southwest one-quarter of Section 5 and the northwest one-quarter of Section 8, Township 13 North, Range 16 West.

Mark L. Cheff has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 20 acres in size located near Milltown, Montana. Mark proposes to create one approximately 10 acre parcel for transfer to his wife, Rebecca L. Cheff, for residential purposes and keep the remaining approximately 10 acre parcel for residential purposes as well. This is in the same vicinity as the Olean Family Transfer, which the Board approved last week.

The history of the parcel is as follows: Floyd and Anna Mae Cheff deeded parcels of land to John B. and Darlene K. Younce in May, 1991. A warranty deed was filed in April of 1996, deeding the property to Paul E. and Linda Harper, Co-Trustees of the Paul E. Harper Revocable Trust. The Harper's filed a warranty deed in September, 2000, to Mark L. Cheff.

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

Mark Cheff was present and came forward to answer any questions the Board may have.

Acting Chair Carey asked if Mr. Cheff intended to transfer this property to his wife.

Mark Cheff stated that was correct. He is refinancing their house and they would like to do so on 10 acres and leave the other 10 acres free and clear.

Acting Chair Carey asked if Mr. Cheff intended to develop the other piece of property.

Mark Cheff stated there were no plans.

Colleen Dowdall stated that a Mortgage Exemption was available which he could use to do the same thing, but it would not create an additional lot.

Mark Cheff stated that when he and Mr. Olean talked to the surveyor, it would save them both money to do these surveys together.

Colleen Dowdall asked what business Mr. Cheff was in.

Mark Cheff stated he was in the logging business.

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

Commissioner Curtiss moved that the Board of County Commissioners approve the request by Mark L. Cheff to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

#### **Hearing: Intent to Create RSID 8481 – Paving of Roadways in Meadows West (George Cates Boulevard)**

Acting Chair Carey opened the public hearing.

Greg Robertson presented the staff report.

In response to a request by the Meadows West Homeowners Association, Missoula County proceeded with noticing the intent to create three separate RSID's to pave roadways within the Meadows West subdivision area. He would give the report for all three RSID's at this time.

Resolution of Intention to Create RSID 8481 was signed on April 8, 2004, to pave roadways in the George Cates area of Meadows West. The estimated RSID cost is \$427,000, with the residents' share of \$14,233.33 to be paid over a period of 20 years. Tom Hanson of Professional Consultants, Inc. is the engineer. There are 30 lots in the district. Twenty-nine letters of protest were received, representing a 97% protest of the district.

Resolution of Intention to Create RSID 8482 was signed on April 8, 2004, to pave roadways in the Tookie Trek area of Meadows West. The estimated RSID cost is \$835,000, with the residents' share of \$14,396.55 to be paid over a period of 20 years. Tom Hanson of Professional Consultants, Inc. is the engineer. There are 58 lots in the district. Eight letters of protest were received, representing a 14% protest of the district.

Resolution of Intention to Create RSID 8483 was signed on April 8, 2004, to pave roadways in the O'Keefe Creek Boulevard area of Meadows West. The estimated RSID cost is \$714,000, with the residents' share of \$12,981.82 to be paid over a period of 20 years. Tom Hanson of Professional Consultants, Inc. is the engineer. There are 55 lots in the district. Twenty-two letters of protest were received, representing a 40% protest of the district.

Loran Frazier, 9890 Lee's Lane, stated he protested this RSID because the roads have been private since 1925 and residents want them to remain private. The road base is good and they can accomplish paving the roads with minimal effort, for a substantial savings to everyone. The same statements he made last fall still apply. He has done more research since then to back up those comments and they have been documented in the letter addressed to the Commissioners.

John Means, Skagway Lane, stated he had concerns about the entire process. The area is covered by the Meadows West Landowners Association. He questioned the division into three separate RSID's because it causes an undue hardship in dividing payment across extremely divergent tracts of land. There are tracts of land with 20+ acres and tracts with 2, 3, 5, 10 acres, all kinds of different sizes. These should not be assessed at the same rate per lot. He proposed assessing any road construction based on the assessed value of the properties. That would put things in fair perspective versus the one lot assessment, which doesn't work in this diverse area.

Pat Nagy-Schwartz stated that she was speaking about proposed RSID 8481 and asked for a show of hands from the audience who were protesting this RSID. She wanted to make sure the Board had seen all the letters of protest and the work done by Loran Frazier. The residents would like to do this on their own at an expense far less than that what is being required in the RSID. She asked that the Board allow them a chance to do this on their own.

Ken Hanna, George Cates Boulevard, stated that by doing the work themselves, they are not only going to do the work that the County proposed, but all the roads and lanes will be paved, which will take care of all the dust problems.

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

Commissioner Curtiss asked for some background on the reasons these RSID's are being proposed.

Mike Sehestedt stated that this area was developing through the use of exemptions to the Subdivision and Platting Act. At a time when 20 acre or larger parcels were exempt from review, the ranch was cut into 20 acre parcels, then marketed with representation they could be further divided, in some cases with actual drawings of the divisions being included as part of the package. The result was a 20 acre parcel being sold and almost instantly becoming 6 or 8 lots, which were then further divided. The County found, and it was upheld in court, that this was a systematic evasion of the Subdivision Act. To resolve that, a judgment was entered into that provided a number of things, among which was a provision that when 51% of the original lots had been built on, the roads would be paved. That was backed up by waivers of protest of an RSID for paving purposes. Covenants and private road maintenance were required during the interim. Development has proceeded out there and is long past the 51% buildout when the RSID's were to be initiated. It was brought to the County's attention by the Homeowners Association, representing all of the homeowners, and requested that the County proceed with the RSID. After a number of hearings, the County did choose to proceed, which brings the situation to this point. He could also answer specific questions.

Commissioner Curtiss stated that an RSID can only be used on a public road. These roads are private, so the County would have to accept them as public roads in conjunction with the creation of these RSID's.

Mike Sehestedt stated that was correct. They will become public roads at some point in this process. They have to become public roads in order to be paved using RSID's.

Commissioner Curtiss stated that with this level of protest, could the County Commissioners still create an RSID.

Mike Sehestedt stated that ordinarily the Commissioners could not create an RSID with this level of protest. However, because of the waivers, legally, the Board could go forward and create the RSID. The fact that the Board can go forward doesn't compel them to go forward. There are some options. He will speak to RSID 8481, but his comments apply to all of the RSID's. First, the Board could decide not to create the RSID. Second, the Board could postpone action on creating the RSID to follow up on the private paving potential. Third, the Board could create the RSID and hold off on awarding any contracts for construction and let the homeowners pursue, for some defined period of time, private paving. Four, the Board could override the protests, create the RSID, award the contract and pave the roads. The issue of what is good policy is for the Board to decide. If the option chosen lets the homeowners pave the roads themselves and they remain private roads, there may be an issue with the Homeowners Association, because they, collectively, are responsible for road maintenance in the Meadows West area. If the roads become public through the RSID process, they are relieved of that responsibility. Where the roads remain private, the Homeowners Association continues to have maintenance obligation.



and liability. That issue could be addressed by agreement among the homeowners. The Homeowners Association would probably like to be rid of the responsibility for all of these roads, but those are issues the homeowners can work out.

Commissioner Curtiss stated that if the Board chooses Option #3, create the RSID but table it for a period of time, 18 months to 2 years, to allow them to do it privately, would the County have to accept the roads as public or could they be left private.

Mike Sehestedt stated that until work is actually started on the RSID, the roads can remain private. Once the County starts spending public funds, it has to become a public road. He would caution the Board about tabling the action for a long period of time as mentioned. There is a cap amount included in the RSID figure. If prices remain stable, it would be good forever, but at some point, the price of construction would exceed the value of the RSID. At that point, it would have been better to kill it initially rather than letting it die a lingering death. The other aspect is that, from the property owners perspective, as long as the RSID has been created, it will show as an exception on their title policy as an undefined, potential liability. If the Board chooses the option to create but table, it should be a fairly short time frame.

Loran Frazier stated there have been some meetings with the homeowners on George Cates where maintenance was discussed. As a group, they are willing to maintain that area themselves. If they have to, they can hash it out with their Homeowners Association. There is a split in that group anyway; they would like to form their own group to take care of the roads in their own subdistrict. There is a contractors bid in place and they are ready to start collecting money and proceed with the paving as soon as possible. From a personal perspective, of encumbering his property with an RSID for an unknown amount, he would prefer to let the road remain private; they will take care of the paving and maintain it themselves. The project could easily be completed by September.

Acting Chair Carey asked what the estimated cost was to the residents.

Loran Frazier stated it was divided by the number of houses and the cost ranged from \$3,300 to \$4,000 each, which is quite different than the \$14,000+ proposed by the RSID.

Commissioner Curtiss asked if that was building the roads to County standards for base and width.

Loran Frazier stated the minimum County standards were proposed on one end based on the design criteria from AASHTO. The ADT is below 400 cars per day. He is proposing 24 feet on the south end where the most traffic is, down to 20 feet where there is a turnaround at the end of George Cates Boulevard. The existing widths on the side roads work really well. There have been no accidents since 1994 in the area. Some widening could be done, but not to 28 feet, which he felt was excessive. Twenty-four feet of paved surface will still have a gravel buffer, which meets the minimum County standards of 20 feet; although desirable is 28 feet. Desirable width could be met at one end and minimum at the other. If that has to be changed, it would probably increase the cost to the high end of \$4,000 per home. This takes advantage of a good roadway that has been there for 100 years, with a good base already. It will take a minimal amount of effort to widen them.

Commissioner Curtiss asked what Greg Robertson thought about the proposal.

Greg Robertson stated he had no objection to the road remaining private. It is obvious that the will of the residents is to take care of the roads themselves. The only issue he has is consistency throughout the entire subdivision and a level of standard applied to one area different from another. The letter originally sent out last October said the roads had to meet County standards. At that time, the Homeowners Association leadership wanted some consistency throughout the development. However, in meetings with Loran, he wanted something of a lesser standard. At the time, Loran was informed that it was not the appropriate time to talk about it, it was something that needed to be brought back to the Commissioners. Minimum County standard for a public roadway is 24 feet of paved surface with 2 foot gravel shoulders and for a rural location, an open ditch on either side.

Rob Braach stated that he thought he had seen some minimum County standards of 20 feet.

Greg Robertson stated there are all sorts of various standards that have been applied over the years, but there has been no consistency. In the last 4 years since he was hired, he has tried to be consistent with road standards. With the equipment the Road Department has, they cannot maintain roads for snow removal, etc., on anything less than 24 feet.

Rob Braach stated that recently at a County Commissioners meeting, a subdivision was approved with a narrower road width of 20 feet.

Greg Robertson stated that applied to a private roadway, with a variance granted.

Commissioner Curtiss stated the variance was granted to minimize the amount of cut and fill needed. The standard of 24 feet is the same, but a variance was granted to a narrower width.

Rob Braach stated that in this area, it might be an option to request a variance to get down to the 20 foot width, in particular on some of the tributaries to George Cates Boulevard, specifically, The Lane. To get it to a 24 foot minimum would be difficult; it would require removing some utilities. A 20 foot width is achievable, but the 24 foot width, serving 10 houses, would require moving utilities and fencing and would create more of a problem.

Scott Waldron, Frenchtown Fire, stated that the recent request for a variance to 20 feet was opposed by the Frenchtown Rural Fire District. Most variances are granted for some geographic or other issue because the road width cannot be accommodated and in those cases, the Fire District usually requires residential sprinkler systems to be installed in the homes.

Commissioner Curtiss asked if the lawsuit required all the side roads to be paved, or just the main roads.

Mike Sehestedt stated that most of these little roads have come in subsequent to the lawsuit and the RSID's pertain to just the roads identified. Fire Bucket Loop in its entirety was identified as a road, however, it does not have a lot of development on it and would be extremely expensive to pave because of grades and slopes. If Fire Bucket Loop were included, it would raise the cost considerably because of construction difficulties.

Acting Chair Carey reopened the hearing.

John Means stated the original reason for doing this paving was for dust abatement. If certain roads that are difficult to do are left out, e.g., Fire Bucket, Skagway, Stolen Rock, there will be major dust pollution from those roads. In addition, there are 10 more lots to the north with dirt roads, each about three-quarters of a mile long, and that dust blows right down the hill. He did not see any effort being made to deal with the major problem of dust, if just the main roads are paved. In addition, there is a discrepancy between the length of the roads involved in the Meadows West group and the difference in price. The people who live on Skagway have to pay a lot more than the Meadows West Landowners Association members. The way to assess this is by property value.

Dick Schwartz stated the homeowners on George Cates have maintained their own roads for a number of years. The only reason the association has maintained the roads for the last several years is that they acquired so much money from the homeowners that they had to spend some, because they are a non-profit organization. They had \$12,000 in the fund, so they figured they better start taking care of the roads. The other reasons for the minimum standards on The Lane are that there are wells, fences and trees in the right-of-way. In order to construct a 24 foot road, wells would have to be moved and trees removed. If it remains at 20 feet, the wells don't have to be moved and the trees and fences can remain.

Acting Chair Carey stated that Scott Waldron had stated he was opposed to a variance to 20 feet, but he was not speaking about this road.

Scott Waldron stated he was speaking about Braach Acres, which involved an extension of The Lane.

Greg Robertson stated during agency review regarding this variance, neither he nor Scott Waldron supported the variance request. It was premature in light of the upcoming RSID decision. The Board could discuss varying from standards after their decision on the RSID is made.

Scott Waldron stated the subdivision has no water supply system or hydrants, it requires the use of water tenders. Access and turnaround become more difficult the narrower the road becomes.

Pat Nagy-Schwartz stated that Mr. Sehestedt said one option was to not create this RSID. If the RSID is created, the roads will become public roads. The Board has gone to a lot of effort to create an RSID to force the people to do the roads to County standards, even though they are clearly private property, private roads. She did not understand the County's interest in trying to deal with this private road when residents have every intention to pave it. They worked with the Post Office about 4 years ago to have their boxes put in a safer location. At that time, they assured the Post Office they were very close to paving the roads. However, things kind of fell apart within the organization and paving didn't happen. Now they are reorganized and have committed to the Post Office that they will pave as private landowners. Her questions have to do with creating the RSID and encumbering their land with a temporary lien. What is the object of that, it would seem that the first option is the right one, to not create this RSID. The plans are in place to pave and they are prepared to collect the funds necessary. They have a bid from JTL and are ready to go. These discussions may need to be continued, because the different options are confusing. Why would the RSID even need to be created when they are going to pave and then be allowed to stay private. They can work with the landowners group to make this work for everyone. The fact that the George Cates group would work on their own does not negatively impact the other two districts.

Acting Chair Carey stated that the County's letter, sent last October, said that the road was to be constructed to minimum County standards, so there is a problem with that condition. There is also a problem because the Fire District is saying a narrower width creates an unsafe condition.

Pat Nagy-Schwartz stated that it was difficult to understand why 20 feet was okay in one spot but not okay in another. They would challenge the fact that 20 feet is acceptable on The Lane but not on other roads.

Commissioner Curtiss stated the narrower width was acceptable because water for fire fighting purposes was provided. As Ms. Nagy-Schwartz stated, sometimes Homeowners Associations can fall apart, which is another reason for her to support creating the RSID. It would be an incentive to actually pave the roads.

Mike Sehestedt stated that if the Board chooses to create the RSID and the homeowners then go forward and pave the roads, the Board can take formal action to terminate the RSID. The justification for creation is to keep the task on track. As was stated, several years ago they were on the verge of paving and then things all fell apart.

Loran Frazier stated that what he proposed were widths that would fit easily. The heavy end can meet the 24 foot County standard. If 28 feet is required, which he considers overkill, it can be done and will add to the cost, but this can still be accomplished for far less than the engineers' estimate, which included complete reconstruction of everything, at a cost of close to \$15,000 each. The Lane can probably be paved to 24 feet, but it will require moving some fences on each side and may not contain a normal crown. He felt those details could be worked out with Greg. The Lane is about 128 paces, with site distance from end to end. Lee's Lane was in the original proposal for reconstruction with wells that would need to be moved. He would propose making it a one-way loop; it is a little over a quarter mile around. He understood that Lee's Lane had been removed from consideration in the RSID. In their proposal, Lee's Lane and another road, Hanna Lane, will be paved. His proposal was based on minimal footprint and taking advantage of the existing roads. If some need to be widened, that can be dealt with. Twenty-four feet of paved surface can fit down by Waldo Road. At the north end of George Cates, north of Lee's Lane, the road narrows and a well, fence and some sheds are in the way, so 20 feet would fit without disturbing them. If 24 feet is required, he would have to take some more measurements and do some additional engineering.

Greg Robertson stated that the well and pump house are not within the right-of-way. It serves Sunset West and is maintained by the County. The road is not necessarily centered in the right-of-way.

Commissioner Curtiss asked Greg if the road could still be 24 feet and fit in the right-of-way and not run into any obstructions.

Greg Robertson stated the standard is 24 feet with 2 foot shoulders and open ditch. The ditch takes up most of the right-of-way space. With some creative design techniques and realigning the road, most of the obstructions could be avoided.

Acting Chair Carey stated that Greg and Loran Frazier could work together to obtain the required 24 feet.

Greg Robertson stated that was correct.

Rob Braach stated his variance proposal will be heard by the Commissioners next week and it is contingent upon the results of this meeting. Scott mentioned that if he had a requirement for residential sprinkler systems, then a 20 foot road width would be acceptable. He does not wish to impose an undue burden on his neighbors. He is in favor of the overall paving project and would like to see it done privately, not through the RSID process.

Scott Waldron stated that the Fire District has been consistent with requiring 24 foot roads. The only time they have been willing to go along with a variance is when people are willing to do fire suppression sprinklers. In Mr. Braach's case, from a purely financial basis, it would be cheaper to pave to 24 feet than to put in sprinklers. The District would be willing to look at some trade offs if the safety issues are met in a different manner.

Bill Nooney, Sr. stated that this road serves only 4 to 6 homes. If the cost becomes prohibitive to pave to a 24 foot width, it may encourage those who have large pieces of property to subdivide. None of the residents want to see that.

John Means stated that the other two groups could get out of their RSID's if the Commissioners accepted one of the options Mike Sehestedt presented.

Mike Sehestedt stated the answer is yes, the Board is not obligated to create the RSID just because there is insufficient protest to defeat it. That is the Board's decision from a policy standpoint.

John Means stated that a while back there was a conflict on Airway Boulevard regarding a motel. He had good feelings about the fact that the County Commissioners stood by their word in that instance. This is something that government doesn't do sometimes, they have to make generalized decision and seldom make specialized decisions. In this case, with the diversity of property sizes, owners and length of roads, it seems that a general rule doesn't apply very well. Separate decisions could be made with County cooperation about some of these other roads where dust abatement is an extreme problem and is likely to get worse. He is looking at fairness and all of the possible alternatives.

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

Commissioner Curtiss asked if the Board chooses to postpone action to give residents time to complete this paving on their own, is there anything else that needs to be done, from a legal or public notification standpoint.

Mike Sehestedt stated he would suggest continuing the discussion to a date certain. At that date certain, the Board could then act on the proposal or continue it again to another date certain. Given what Mr. Frazier has said and that he and Greg can come to some agreement, continuing it to a date three months hence is ample time to know if the project will be done privately. However, the best course of action is a decision for the Board to make.

Commissioner Evans joined the meeting at 2:30 p.m. and asked Acting Chair Carey to continue to chair the meeting to its conclusion.

Commissioner Curtiss moved that the Board of County Commissioners postpone action on the creation of RSID 8481 – George Cates/Meadows West Paving – until Wednesday, August 25, 2004, to allow the homeowners to work with the Public Works Director and the Frenchtown Fire District to have the roads come as close as possible to meeting County standards and make alteration so the roads fit within the right-of-way and avoid existing impediments. Acting Chair Carey seconded the motion. The motion carried on a vote of 3-0.

Mike Sehestedt stated that if the project proceeds and the road is paved, the RSID could be terminated at an earlier date administratively.

#### **Hearing: Intent to Create RSID 8482 – Paving of Roadways in Meadows West (Tookie Trek)**

Acting Chair Carey opened the public hearing.

Rob Braach stated he owned property that uses Tookie Trek for access and will be proposing a 2 lot subdivision soon. He is not protesting the creation of this RSID. He is in favor of paving overall. In the George Cates area, there are enough individuals willing to step up to see the paving gets down. Off of Tookie Trek, there is a large, more diverse ownership and the RSID may be the best process to accomplish the paving.

Debbie Lester stated that the 14% protest is not representative of the true feelings of the residents. It speaks more to the lack of organization of the homeowners. She applauded the George Cates people, they have been working together for a long time on this issue. It took the Tookie Trek owners by surprise, so they aren't as organized. In speaking with her neighbors, they are not in favor of this RSID. There are only 32 houses served by these roads. She is protesting based on the cost and that it is over-engineered for this rural district. No school buses use the roads and they seems to hold up well with the existing traffic. One of the reasons for paving is dust abatement, however these roads have not been regularly oiled or maintained. In the years when they are oiled, dust control is effective. They are sensitive to neighbors who own horses. Paving the roads would not be good for the horses. She would be in favor of having the roads oiled regularly.

There is no safety problem with the roads now, they have a good base. There are parts of the roads that don't lend themselves to being paved to County standards, particularly the top of Tookie Trek, it is very narrow and has steep sides; and Fire Bucket Loop. The engineering costs to build those to County standards are very high. She would like to opportunity to work with the neighbors on a more cost effective solution.

Glen Sparks, 11800 Fire Bucket Loop, stated he has several objections to the RSID. The proposed RSID includes a portion of Fire Bucket Loop, Tookie Trek, Jars Gang and Peak's Row. Jars Gang and Peak's Row account for a quarter of the cost of paving these roads and they were not part of the original subdivision. They were put in to original lots created by family transfer. Consistency has been mentioned. He lives on a portion of Fire Bucket Loop that is not really even a road, it's a dirt track and he has to use 4 wheel drive to get in and out of his home. The road belongs to the Homeowners Association. The cost of \$800,000 is for roads that will not benefit him in any way but he will be sharing the burden. Even if those roads are paved, the fire department still would not come to his house, yet he has to share the burden of the RSID. What will happen to his road? The covenants state that once 51% of the lots are built out, steps should be taken to form an RSID to begin the paving of roads, it does not state that all the roads have to be paved or that some should and others shouldn't, it just says that steps should be taken to begin the paving of roads. The first step to paving roads is creating the proper width and base. The cost of the RSID is to pave roads that are already adequate that the fire department can access. The fire department can't access his road and nothing is proposed to be done about that. If this much money is being spent and he has to share in the cost, less paving should be done and more money should be spent to improve roads that aren't adequate. If there is money left over, that can be used to begin paving roads that are adequate. Inhabited roads that aren't adequate need to be brought up to standard, even as a dirt road. The County allows for variances for dirt roads, they don't have to be paved to be County roads. The roads can be made County roads without paving to the extent being proposed.

Susan Wagner stated that she lives on Peak's Row Lane. There are many roads above her that will not be paved, in the Fire Bucket Loop area. When the wind blows down the hill, just about every day, it will still bring dust. This does not meet the justification for dust abatement and she questioned why to proceed with the RSID at all. She would like to see the roads paved. Residents would like the opportunity to work together to try to accomplish it themselves at a lower cost. Tookie Trek, Peak's Row, Jars Gang and a portion of Fire Bucket are included in this RSID. Where does it end on Fire Bucket, it is not clear from the map. The previous speaker is part of the RSID but has said that his road will not be paved. Would it be possible to have Fire Bucket separate.

Greg Robertson stated that the portion of Fire Bucket Loop included is the piece that takes off from Tookie Trek and extends to the west to the T-intersection, then north and west up to O'Keefe Creek Boulevard. It is basically the straight portion of the road; it does not include any of the loop.

Susan Wagner asked if the loop portion of Fire Bucket was included in the O'Keefe Creek RSID.

Greg Robertson stated that after evaluation with the engineer, Tom Hanson of PCI, and consultation with the Homeowners Association, it appeared that portion of Fire Bucket was impossible to build to any geometric standard. The costs would be prohibitive.

Susan Wagner asked if people who live on the portion of Fire Bucket not being considered for paving are being assessed for this RSID.

Greg Robertson stated he believed they were, based on the benefit of getting to their property. From speaking with Tom Hanson and physically viewing Fire Bucket Loop, the finished slope would be between 35% and 40% range. The County maximum is 8% to 10%. It is very steep and difficult to build on, which is why most of those lots are not developed.

Mike Sehestedt stated that most all of the lots were created by Certificate of Survey. It looks like to bulk of lots on Fire Bucket Loop are still 20 acres. There are some smaller lots in the center off Kadie Ann Lane and a 15 acre lot near the junction with O'Keefe Creek. However, they were all created by Certificate of Survey using some exemption to the Subdivision Act. They did not go through any review that it would be physically possible to construct roads.

Susan Wagner stated that if the homes on Fire Bucket are part of the subdivision, there should be some requirement that the road be oiled on a regular basis. However, they would first like to be given the opportunity to organize and get their roads paved on their own at a lower cost, as was just provided for the George Cates residents.

Glen Sparks stated that everybody within the Homeowners Association will be assessed an equal amount, based on improvements and ease of access to their property. He is being assessed an equal amount and this does not benefit him in any way. His road isn't being touched but is being assessed as everybody else and it doesn't do him any good. The fire department still won't come to his house and he will be paying for paving roads that are already adequate.

John Mazzola stated he is with the Homeowners Association. With due respect to Mr. Sparks, he is still accessing his property through Tookie Trek and a part of Fire Bucket that will be paved. To say that it is not benefiting him at all is a bit of a misstatement.

Weldon Sparks stated he has two lots on Fire Bucket Loop in the same area as Glen. There is no paving done on any part of the road near his property; one of the lots has no road at all, Fire Bucket has not been completed into that area. The road paving does not benefit him, there is no advantage for the dust abatement. He has lived there for 8 years and has had no problem getting there, so the paving won't improve it. His biggest concern is all the other roads that will be paved that he is paying for and Fire Bucket Loop is not being touched. In the future, he will be asked to finish Fire Bucket and the folks included in this RSID will not help pay for that.

Tom Domingo stated that all the homeowners on Tookie Trek weren't able to get their protest in. He would like to ask for more time to organize the owners to accomplish the paving on their own instead of through an RSID.

Glen Sparks stated that he said Peak's Row and Jars Gang were not part of the original subdivision. The roads in the original subdivision were Tookie Trek, Fire Bucket Loop, O'Keefe Creek and George Cates. It seems that if Peak's Row

and Jars Gang are included in the RSID, the County would be setting a precedent of paving any private roads created through subdivision of an existing lot, with the Homeowners Association being responsible for the roads. Kadie Ann falls into the same category.

Greg Robertson stated it was correct that Peak's Row and Jars Gang are included in the RSID but Kadie Ann is not. When these roads were physically viewed, for this subdistrict and the 8483 subdistrict, it was found that to build them to County standards was cost prohibitive and would yield nothing of benefit.

Susan Lester stated that cost prohibitive is relative term. They feel that the amount proposed for the Tookie Trek RSID is cost prohibitive. In regard to safety issues, she has seen fire trucks all the way up the road in its current condition without any problems. Fire trucks have access to all the properties right now, so building to County standards is over engineered.

John Mazzola stated that Kadie Ann Lane does not have enough easement to consider making it a County road. It was a private road put in to access lots created by family transfer. The residents on Kadie Ann are being assessed in the RSID for their access via Tookie Trek and Fire Bucket Loop.

Commissioner Curtiss asked if Homeowners Association fees are collected from residents.

John Mazzola stated they are assessed fees and he does try to collect the fees.

Commissioner Curtiss asked if there were plans for improvements to Fire Bucket.

John Mazzola stated the annual dues for Meadows West right now are \$35 a year. They tried to increase the dues in 2000 to \$100 or \$200 to cover snowplowing and oiling, but they couldn't even get a quorum at the meeting. Raising the dues to at least cover some plowing was discussed again last year and it did not pass. Residents wanted to stay at \$35 and wait to see what would happen with this RSID. The \$35 assessment is enough to have the roads graded once a year. They did have some extra money a few years ago and that was used to oil all the roads within the Association at a cost of over \$15,000. It is hard to get a lot done in an area this big on \$35 per year and the membership isn't willing to pay more.

Tom Devlin stated that he lives on Fire Bucket Loop. He put in Kadie Ann Lane, which is 30 feet wide with a 50 foot radius cul-de-sac on the end. It isn't all that steep and there would be a way to put a road in if needed. He has lived up there for almost nine years and the road has never been oiled. Right now, the traffic goes very fast and he is not in favor of paving, traffic will go even faster.

John Mazzola stated he has heard about speeding on the roads a lot and that if they are paved, speeds will increase. Right now, not being County roads, there is no enforcement at all. One of the arguments for paving is that they will become County roads and there will be some method of enforcement to control speeders. He also commented on the suggestion that the folks on Tookie Trek get together to do the paving on their own, as the folks on George Cates are doing. George Cates has a total of about 30 households. They tried to do the paving a couple years ago and it fell apart. The main reason they are acting now is they are being forced to do so in the face of this RSID. Tookie Trek has 58 lots and counting. Of those 58 people, if someone chooses not to pay, there is no recourse for the people who organized the effort.

Mike Sehestedt stated the RSID mechanism does provide a recourse for those who don't pay. Outside of that process, the private methodology is a binding contract, but enforcement of the contract is through the courts, which is a slow process and the group must hire an attorney, which is an additional expense. It is expensive and getting a judgment is no guarantee of actual collection.

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

Greg Robertson stated that the protest period for an RSID was changed by the last legislature and it is for a period of 30 days. All residents received notice.

Commissioner Curtiss stated that these people had ample time to protest. Only 8 official letters of protest were received and one additional person appeared today to protest.

Acting Chair Carey stated he was inclined to let these folks do what the George Cates folks were allowed to do, try to put something together to accomplish this on their own. They have heard what a daunting task that may be. Summer is also a difficult time to organize.

Commissioner Evans stated she was also willing to let them have a chance.

Commissioner Curtiss stated the other group is already organized and the additional time granted was to actually do the work, not just organize themselves. She is not willing to give these people as much time to see if they can get organized. An engineer has done some work on these project and she asked if he has been paid for that work.

John Mazzola stated the engineer is Tom Hanson and he has not been paid for anything at this time.

Susan Wagner stated that if they are given a chance to organize to do this themselves, does it need to be to the 24 foot wide County standards throughout the designated area.

Acting Chair Carey stated that is a little room for modifications, but that would have to be worked out with the County Public Works Director.

Commissioner Curtiss stated that the only way the engineer will be paid is if the RSID's are formed. If the George Cates folks do this on their own, it does not include any payment to the engineer.

John Mazzola stated that costs have gone up 4% since they began this process last year. Waiting for another 12 to 18 months could increase costs another 4% or more. He has very little faith in the process of getting organized, having tried

to do so earlier to handle plowing, grading and oiling. George Cates is a smaller group of 30 homeowners and they have been successful. This group, with 60± homeowners, is probably impossible to organize.

Commissioner Evans asked for a background on how the initiation of these RSID's began.

Mike Sehestedt stated that out of the settlement of the Meadows litigation came, among other things, a requirement that an RSID for paving be initiated when 51% of the lots had been built on. There are RSID waivers as a result of resolving the litigation. After significantly more than the required percentage had been built on, the Homeowners Association initiated this process. There have been meetings with the Homeowners Association on a number of occasions. That is how the process began, which brings events to today. As a result of the meetings, the three subdistricts were created rather than a single RSID for all properties. As a result of the hearing today, the George Cates area has been granted a three month extension.

Commissioner Evans asked what happens if the RSID is not created, based on the litigation.

Mike Sehestedt stated the Board continues to have the right to create the RSID's. The process of creation of an RSID is that the Board states their intention to do so and there is a right to protest, which has been waived in this case. In an ordinary case, if 50% or more protest the creation, the Board loses the jurisdiction to proceed. The Board has the jurisdiction to proceed in any case on these RSID's. The question is whether or not the Board should proceed. The four choices are to kill it, to table it, to create it and go forward, or to create it and defer awarding a contract to allow time for the citizens to pave on their own. The downside is that each RSID is created with a specific maximum assessment which represents the engineer's best estimate of costs at this point in time. The longer the delay, the greater the likelihood that inflationary pressure will make the maximum assessment inadequate, which effectively kills the RSID because the costs exceed the noticed amount.

Commissioner Evans stated that the people who initiated the RSID hired the engineer.

Tom Hanson, PCI, stated that was correct. The Homeowners Association board asked if he would help them assemble the costs and methodology for this RSID. Most engineering firms do that up front work without charge in anticipation of being retained, so he has not been employed, per se. He is doing the work in an effort to help them get these RSID's off the ground.

Commissioner Evans stated she has mixed emotions. The Board is concerned about the dust problems and these folks cared enough to initiate this process. On the other hand, she is not unsympathetic to those who say they can't afford it. She is more inclined to allow time for the folks to try to do this on their own. Loran Frazier was instrumental to his area because he knows how to construct roads, that is his job. She is not willing to impose the RSID even though waivers have been signed.

John Mazzola stated one of the triggers for the association initiating the process was a letter from the City-County Health Department, as the result of a subdivision review within the association, where the paving was specifically mentioned.

Glen Sparks stated that the covenants state that once 51% of the original lots are built on and occupied, steps should be taken to begin forming an RSID to begin the paving of roads. That does not mean that the roads need to be paved to the extent outlined in the RSID's. The first step to paving a road is to create the proper base, the proper width. That can be done with gravel roads and paving can be done at a later time which will still satisfy the covenants.

Tom Devlin stated that if this is done, the County would take over the plowing and maintenance of the road. The Frontage Road is a County road and in nine years, it has never been maintained. Deschamps Lane, which he can see from his house, creates a significant amount of dust. Why doesn't the County pave that road.

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

Acting Chair Carey stated that Mr. Mazzola's experience is something to consider. It is hard to get a group organized. However, he is willing to let these folks try and he would give them three months to come back with a plan for how this will be done as a private activity.

Commissioner Curtiss stated the amount specified in the RSID would probably not be valid in three months time. The George Cates folks are way ahead of the game. She would prefer to give the Tookie Trek folks a shorter amount of time to get organized, maybe a month. If they are given three months, they will wait until August to get organized. She would be willing to give them a month to see if they can come up with a plan.

Commissioner Evans stated that it was not logical to give them only a month, especially during the summer. She would be willing to give them three months. It is not healthy to live on a dusty road and at the same time she is not unsympathetic to the costs involved. However, these people knew it was dusty when they moved there.

Acting Chair Carey moved that the Board of County Commissioners postpone action on the Creation of RSID 8482 – Tookie Trek/Meadows West Paving – until Wednesday, August 25, 2004, to give the residents three months to come back before the Board with a plan on how they will privately pave the roads included in the potential RSID. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

#### **Hearing: Intent to Create RSID 8483 – Paving of Roadways in Meadows West (O'Keefe Creek Boulevard)**

Acting Chair Carey opened the public hearing.

Larry Burg, 12190 Passion View Drive, stated that he understands the roads are dusty. He has three-quarters of a mile of road to his home. His driveway is already asphalt paved and he plans to pave all the way down to O'Keefe this summer. It meets the 6% or less grade and he has been working with Scott Waldron on access. It is more than 24 feet wide and the road base is good. He objects to this RSID because of the cost, it is prohibitive. Something needs to be done because of

the dust problem but he does not know what the remedy is. The Homeowners Association cannot afford to continue to oil the road. He would suggest using asphalt millings to pave the road. Many large trucks and logging trucks use the road and makes it quite bumpy. The people on Stolen Rock and Skagway won't be paved. The road is passable and they should all get together and pave it. Something needs to be done but he was not sure the RSID was the way to fix the problem. He asked what the cost to him of this RSID would be.

Acting Chair Carey stated that it is about \$13,000 spread over 20 years plus interest.

Mike Sehestedt stated the interest is better now than it will be tomorrow and certainly better than it will be in six months.

Commissioner Curtiss stated his share would be about \$650 a year plus interest.

Acting Chair Carey stated that would be about \$54 a month plus interest.

Larry Burg stated he pays over \$2,700 a year for insurance. The \$54 a month doesn't include the rest of his costs. Additionally, there is a portion of O'Keefe Creek Boulevard that tees to the north from Highway 93 which is approximately 1,100 feet and serves only one residence. Why should all the other people have to pay to pave that 1,100 feet when it only serves one house? Nobody benefits from that.

Carl Flood, Tract 38, stated that people go by his place doing 60+ mph, creating a lot of dust. He would like to see the roads paved, but will all the people be able to pay for it or will they move out. He is generally in favor of the RSID. Costs go up every year. If the cost is prohibitive and people move away, what has been accomplished? He would like to see the costs fair to everybody. The Board has already granted a three month extension to forming the other two RSID's, so he would like to see everybody treated the same.

John Means asked why these were being assessed by lot and not by value of property since there is such a diversity in the area. Why is this not being assessed proportionally to the value of the property?

Greg Robertson stated that in discussions with Bond Counsel, who has to write a legal opinion to support the sale of bonds, it was determined that this was the most fair method of assessment. As learned from the Mullan Road Sewer project, the assessable value method basically ends up with homeowners subsidizing vacant lands. This method of assessment makes it more equitable so that vacant lands, as they develop, which they will, pay their fair share. That is why Bond Counsel felt this was the most fair method of assessment.

John Means stated that there are alternative methods for assessment. He purchased two pieces of property in Pattee Canyon. The County taxed the second piece as a lot for development, although he had no intention of developing it. The County was willing to allow him to sign a waiver that he would not develop that piece of property then the taxes were lowered appropriately. There are procedures to correct these inconsistencies. If the waiver is not obeyed, then they can be taxed accordingly. He felt the current method of assessment was not fair.

Commissioner Curtiss stated that, again, as learned from the Mullan Road Sewer project, if a larger piece of land is assessed more, it leads to subdividing the land to pay the costs, which residents have testified they don't want to see happen in this area.

Mike Sehestedt stated the large pieces are paying the same as the smaller pieces right now. The assessed value basis is only on the value of the property. If land is assessed as agricultural, it pay very little but it could be subdivided in a year. It would lose its agricultural status but its share of the RSID is fixed forever. Taxes are a different thing.

John Means asked if people do subdivide in the future, will that reduce the cost to the rest of the people.

Mike Sehestedt stated the answer is no.

John Means stated that was also not fair. The length of roads is also unfair. Some people are paying for a road they never use, well beyond the quarter mile they do use. People should pay for what they use. In this case, everybody pays the same. It seems grossly unfair. It also seems there has been special treatment of different procedures, using millings or oiling the roads to cut dust and not pave them. It seems everyone in the area objected to the procedure. They received their notice about three weeks ago which is not very much time to organize a neighborhood. Some special recognition needs to be given to these different problems in different areas rather than a blanket fix for everybody.

Commissioner Evans asked for an explanation of the methods that can be used to assess RSID costs.

Mike Sehestedt stated there are different methods of assessments for roads. One method is front footage, how much frontage a lot has on a road, per front foot basis. That has massive inequities and is almost never used. Another method is the area basis, where each lot is charged on a square foot basis. That spreads the costs much more heavily to the large ownerships and produces tremendous pressure to subdivide. There is also the per unit method, which assesses each unit equally, in this case, per lot. Combinations of the three methods can be used in some cases. Utilities can be done on a per hook up basis, which is not really applicable to streets. The assessed value method is based solely on the assessed value of the land, not the improvements, and makes it practically free to agricultural uses and more expensive to an individual residential tract, because the land value is much higher. A problem with the RSID mechanism is that once assessed, the cost per each unit of land is fixed. Costs cannot be re-spread with subsequent changes in use or division of land.

Tom Hanson stated the homeowners did not want a 20 acre parcel subdividing immediately after the RSID was created. They raised the question if it would be possible for the Commissioners to adopt a policy that any further division of property be encumbered to a fee equal to the lot assessment which would pay down the bonds, effectively shortening everybody's time period.



Mike Sehestedt stated that is always a problem, however, RSID law say that cannot be done. It could be a special impact fee in the subdivision regulations for this area, but he would have to investigate further; there are enough issues with impact fees already.

Commissioner Curtiss asked if there was a possibility of doing some kind of mitigation fee.

Mike Sehestedt stated the purpose of mitigation fees would be to pay for some future road improvements. The best advantage would be latecomer fees, so that infrastructure could be installed and collected back. The Legislature has never seen fit to authorize that.

Mary Means stated that she questioned the 50 lots mentioned in the letter; she felt the number was higher. There are many lots that have been divided in the last year and they have probably not been counted.

Mike Sehestedt stated that if they are in fact tracts of record, when the time comes to spread the assessment, each of them will be billed accordingly. The lots were calculated based on the October, 2003 assessment rolls.

Mary Means stated she meant the lots north of O'Keefe Creek Boulevard.

Mike Sehestedt stated if they are lots of record, they will be assessed.

Commissioner Curtiss stated that when the assessment is prepared, each lot of record will be assessed which will reduce the assessment to all the lots.

Mary Means stated the cost was high for people on fixed incomes. It is of concern to her and she may have to consider moving.

Larry Burg stated again that the 1,100 feet of O'Keefe Creek that only serves one lot needs to be evaluated.

John Mazzola stated that the number of homes might not be accurate, "every time you turn around," another new house is going up. In the last five years, there have been over 40 homes built and there are currently a half dozen under construction. Family transfers are an ongoing thing as well. As Mike explained, the assessment methods are limited. They did look at all the methods. They looked at the road frontage method, but ran into problems. For example, he lives on a cul-de-sac and only has 25 feet of frontage whereas someone on the corner of Jars Gang and Peak's Row might have 750 feet of road frontage. The per acre basis also had problems; there are lots as large as 27 acres and some as small as 1 acre. It is the diversity that makes it difficult to come up with the perfect formula. With the limitations of assessment methods, this was the formula that was equitable to everyone.

Larry Burg stated that if the RSID is created, he would like to have something in writing that he may be able to get the same price break for materials when he paves his driveway.

Acting Chair Carey stated that he did not know if the County could make that guarantee, but Mr. Burg could work with the contractor.

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

Commissioner Curtiss stated that to be fair, the folks in this area should be given the same three months as the other two RSID's to allow them to investigate alternative options. The County would like to be able to get more millings, but they are hard to come by. Testimony today said the Homeowners Association wasn't very successful at collecting from everyone and was only able to oil the road once a year. In the end, the best way to deal with this is to create the RSID to pave the roads and have the assessment collected along with taxes. However, she is willing to give these folks the same three months.

Commissioner Curtiss moved that the Board of County Commissioners postpone action on the Creation of RSID 8483 – O'Keefe Creek Boulevard/Meadows West Paving – until Wednesday, August 25, 2004, to give the residents three months to come back before the Board with a plan on how they will privately pave the roads included in the potential RSID. 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 3:55 p.m.

Award – Following the Public Meeting, the Commissioners (for the Missoula County Airport Industrial District) signed a Notice of Award, dated May 12, 2004 to JTL Group, Inc., for the Sewer Main Extension and Street Construction (Project #6420-01) for the Missoula Development Park, Phase 3B (West Harrier), for a contract price of \$213,027.00. The document was returned to Andy at Professional Consultants, Inc. for further signatures and return.

#### THURSDAY, MAY 13, 2004

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 Curtiss signed the Claims List, dated May 12, 2004, with a grand total of \$19,758.49. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Carey and Curtiss signed two (2) Claims Lists, dated May 13, 2004, with the following grand totals:

- 1) \$90,962.14; and
- 2) \$3,700.00.

The Claims Lists were returned to the Accounting Department.

Plat and Agreement – The Commissioners signed the Plat and Development Agreement for Meadowlands Lot 1, located in the NE¼ of Section 28, T 14 N, R 20 W, PMM, Missoula County, a total gross and net area of 2.26 acres, with the owners of record being Mahlon F. and Jerill Tackitt. The Development Agreement, dated April 14, 2004 relates to subdivisions on primary travel corridors and sets forth the standards required within Article 3-14 of the Missoula County Subdivision regulations.

#### ADMINISTRATIVE MEETING

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

Task Order – Chairman Evans signed Task Order No. 04-07-4-31-031-0 to the Missoula County Unified Government Master Contract between the Montana Department of Public Health and Human Services and Missoula County for fiscal management for the Immunization Program. The total amount of this Task Order shall not exceed \$25,722. The term will be January 1, 2004 through December 31, 2004. The document was returned to the Health Department for further signatures and handling.

Resolution No. 2004-071 – The Commissioners signed Resolution No. 2004-071, dated May 13, 2004, a Budget Amendment for the Judgment Levy reflecting \$20,000 for a claim form for the Schramm Bridge judgment. The BCC will have the option to fund this in the FY05 budget with one-time cash or a one-time judgment levy. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Request for Action – The Commissioners approved a Missoula County 2005 Budget Enhancement Request in the amount of \$25,000 to allow the County to hire a health benefits plan consultant to help create a plan to stabilize the County's health insurance plan, as health claims continue to significantly exceed revenues and deplete the trust account. The document was returned to Chief Financial Officer Dale Bickell for further handling.

Counter Offer – The Commissioners reviewed and approved an Offer Review Committee Counter Offer, dated May 13, 2004 to the Addendum (dated April 30, 2004) to the Buy-Sell Agreement with Missoula Ventures, LLC for Lots 3 & 4, Block 11, Missoula Development Park. All terms and conditions are set forth therein. The document was returned to Ken Staninger of Properties 2000 for further handling.

Other items included:

- 1) The Commissioners held a discussion regarding Impact Fees, and were given an overview of what the City of Missoula has adopted. A motion was made and passed to direct staff to continue working on this issue and further discussions will be scheduled.
- 2) The Commissioners discussed the scheduling of public meetings regarding Building Code issues.

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

#### **FRIDAY, MAY 14, 2004**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was out of the office all day. During the day, Commissioner Curtiss spoke to two government classes at Hellgate High School.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated May 12, 2004, with a grand total of \$58,005.45. The Claims List was returned to the Accounting Department.

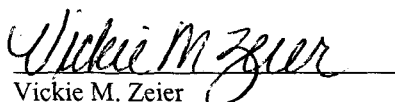
Claims Lists – Commissioners Carey and Curtiss signed three (3) Claims Lists, dated May 14, 2004, with the following grand totals:

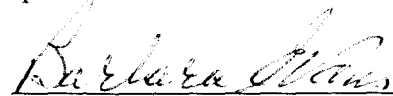
- 1) \$125.00;
- 2) \$126,148.47; and
- 3) \$112,160.61.

The Claims Lists were returned to the Accounting Department.

Plat – The Commissioners signed the Plat for Holloman Creek Estates, a three lot minor subdivision plat located in the NE¼ of Section 18, T 11 N, R 18 W, PMM, Missoula County, a total gross area of 120.56 acres, with the owner of record being WT&E, LLC.

Replacement Warrant – Acting Chairman Carey examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Charles H. Rinehart, Missoula, as applicant for Missoula County Public Schools Warrant #138457, issued April 23, 2004 on the MCPS Payroll Fund in the amount of \$282.88 (payment for wages), which was not received in the mail. No bond of indemnity is required.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, MAY 17, 2004**

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 Curtiss signed the Claims List, dated May 14, 2004, with a grand total of \$9,552.08. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated May 17, 2004, with a grand total of \$15,763.60. The Claims List was returned to the Accounting Department.

Plat and Agreement – The Commissioners signed the Plat and Subdivision Improvements Agreement and Guarantee for Hawthorn Springs, a subdivision located in the SW¼ of Section 31, T 15 N, R 20 W, the NE¼ of Section 12 and the SE¼ of Section 1, T 14 N, R 21 W, and Section 6, T 14 N, R 20 W, PMM, Missoula County, a total area of 518.88 acres, with the developer being Patchy, Inc. and the owners of record being Patchy Inc. and H Lazy Heart, LLC (SW¼ of Section 31 only). The Improvements Agreement relates to several items as set forth therein. Said improvements shall be completed no later than May 6, 2005. The estimated costs are \$1,915,000, and have been guaranteed by a Letter of Credit from Bitterroot Valley Bank.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 10 – CY2004 - Pay Date: May 14, 2004. Total Missoula County Payroll: \$938,249.12. The Transmittal Sheet was returned to the Auditor's Office.

Resolution No. 2004-072 – The Commissioners signed Resolution No. 2004-072, dated May 17, 2004 a resolution to submit to the qualified electors by mail ballot on August 17, 2004 the following question: "Shall the proposition to create the Goodan Keil County Water District under parts 22 and 23 of Chapter 13 of Title 7 be adopted?" The election for the Board of Directors (total of three directors) will be presented on the same ballot.

Resolution No. 2004-073 – The Commissioners signed Resolution No. 2004-073, dated May 17, 2004 a resolution to submit to the qualified electors by mail ballot on August 17, 2004 the following question: "Shall the proposition to create East Frenchtown Water District under parts 22 and 23 of Chapter 13 of Title 7 be adopted?" The election for the Board of Directors (total of three directors) will be presented on the same ballot.

Resolution No. 2004-074 – The Commissioners signed Resolution No. 2004-074, dated May 17, 2004 a resolution to submit to the qualified electors by mail ballot on August 17, 2004 the following question: "Shall the proposition to create Turah Meadows Sewer and Water District under parts 22 and 23 of Chapter 13 of Title 7 be adopted?" The election for the Board of Directors (total of three directors) will be presented on the same ballot.

Phasing Plan Amendment – Per recommendation of the Office of Planning and Grants at their Planning Status meeting on May 17, 2004, the Commissioners approved and signed a letter dated May 17, 2004 to Ryan Salisbury, WGM Group, Inc., approving his request for an amendment of the Canyon Creek Village Subdivision Phasing Plan. The amended plan will add three additional phases to the subdivision.

Signature Page – The Commissioners reviewed and signed the Larchmont Claims Signature Page for the A/P Invoice Register dated May 7, 2004, in the amount of \$54,551.53. The Signature Page was returned to the County Auditor.

**TUESDAY, MAY 18, 2004**

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

Claims Lists – The Commissioners signed three (3) Claims Lists, dated May 14, 2004, with the following grand totals:

- 1) \$92,582.92;
- 2) \$3,980.00; and
- 3) \$10,003.45.

The Claims Lists were returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated May 17, 2004, with the following grand totals:

- 1) \$2,009.05; and
- 2) \$16,206.41.

The Claims Lists were returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated May 18, 2004, with a grand total of \$71,592.52. The Claims List was returned to the Accounting Department.

**ADMINISTRATIVE MEETING**

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

Agreement – Chairman Evans signed a Renewal Grant Agreement between the United States Department of Housing and Urban Development ("HUD") and Missoula County for the Western Montana Mental Health Center/Turning Point to operate the SHARE House transitional housing grant (Project #MT01B300004), for individuals who are homeless and chemically dependent. The total amount shall not exceed \$196,664.00 for a term of one year. The All other terms and conditions are set forth therein. The document was returned to Kristina Swanson at the Office of Planning and Grants for further signatures and handling.

Agreement – Chairman Evans signed a Renewal Grant Agreement between the United States Department of Housing and Urban Development (“HUD”) and Missoula County for the March Against Homelessness transitional housing grant (Project #MT01B300008), for single mothers with children, most of whom are homeless because of domestic violence. The total amount shall not exceed \$35,240 for a term of one year. The All other terms and conditions are set forth therein. The document was returned to Kristina Swanson at the Office of Planning and Grants for further signatures and handling.

Contract – The Commissioners signed a Professional Services Contract between Missoula County and the University of Montana to implement integrated weed management on Mt. Sentinel, as part of the Weed District Trust Fund projects. The term will be May 1, 2004 through August 31, 2004. All other terms and conditions are set forth therein.

Agreement – The Commissioners signed a Memorandum of Agreement, dated July 1, 2003 between Missoula County and the Missoula Indian Center for alcohol and other substance abuse prevention, intervention and treatment for prioritized populations in accordance with the Missoula County Alcohol and Other Drug Treatment and Prevention Services Plan for 2000-2004. The total amount shall not exceed \$10,223.00, contingent upon formal notification by the State of the amount available. The term will be July 1, 2003 through June 30, 2004. All other terms and conditions are set forth therein.

Agreements – The Commissioners signed two (2) Satisfaction of Sanitary Sewer Grant Program Agreements, dated May 18, 2004 for Property Owners (Secured by Real Property), declaring fees fully paid, satisfied and discharged, as follows:

- 1) Agreement with Lela Beagley, 545 Speedway Avenue. The original agreement is dated September 4, 2003, and is recorded in Book 718, at Page 348; and
- 2) Agreement with Murvin B. and Joyce M. Rickel, 28 Canyon View Drive. The original agreement is dated August 28, 2003, and is recorded in Book 718, at Page 355.

The Program Agreements are part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District.

Extension Request – Per recommendation of the Office of Planning and Grants, the Commissioners approved and signed a letter, dated May 18, 2004 to Julie Titchbourne, WGM Group, Inc., approving her request for a one-year extension of the final plat approval deadline for the Charlie’s Acres, No. 2 Subdivision. The new deadline will be June 19, 2005.

Board Appointment – The Commissioners approved and signed a letter, dated May 19, 2004 reflecting the appointment of Margaret McManus, Missoula, as a “regular” member of the Missoula Aging Services Governing Board. Ms. McManus will fill an unexpired term through December 31, 2004. Also appointed was Jim Streeter to a “1<sup>st</sup> Alternate” position through 2006.

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

#### WEDNESDAY, MAY 19, 2004

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

Claims Lists – The Commissioners signed two (2) Claims Lists, dated May 18, 2004, with the following grand totals:

- 1) \$37,924.35; and
- 2) \$3,047.91.

The Claims Lists were returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated May 19, 2004, with the following grand totals:

- 1) \$111,587.71; and
- 2) \$1,659.94.

The Claims Lists were returned to the Accounting Department.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, no items were signed. The Commissioners approved the schedule for Code Enforcement meetings. The Commissioners also toured the E9-1-1 Center with Jane Ellis, Director of Emergency Services, and also toured the remodel construction areas on the 4<sup>th</sup> floor of the Courthouse with Larry Farnes, Facility Maintenance Supervisor.

#### PUBLIC MEETING – May 19, 2004

The Public Meeting was called to order at 1:30 p.m. by Commissioner Barbara Evans. Also present were Commissioner Jean Curtiss, Commissioner Bill Carey, Deputy County Attorney Colleen Dowdall, County Clerk and Recorder/Treasurer/Surveyor Vickie Zeier and County Public Works Director Greg Robertson. Additionally, Planning and Zoning Commission Citizen Members Ty Anderson and Clem Work were in attendance.

#### Pledge of Allegiance

#### Public Comment

None

**Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$673,522.45. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Hearing (PLANNING AND ZONING COMMISSION): Zoning District 43 Variance (Signs) – Loren's Carpet One (Buckhouse Lane)**

Chairman Evans recessed the meeting of the Board of County Commissioners and convened the meeting of the Planning and Zoning Commission. Planning and Zoning Commission members present included Commissioner Barbara Evans, Commissioner Bill Carey, Commissioner Jean Curtiss, County Clerk and Recorder/Treasurer/ Surveyor Vickie Zeier, County Public Works Director Greg Robertson, Citizen Member Ty Anderson and Citizen Member Clem Work.

Mark Landkammer, Office of Planning and Grants, presented the staff report.

This property, Loren's Carpets building, is located at 4949 Buckhouse Lane, approximately one mile southwest of the Buckhouse Bridge at the Blue Mountain Plaza. It is zoned ZD 43, which was adopted in June, 2002, which allows for a fairly minimal amount of signage. This is a large building that could house nine or more businesses in the future. ZD 43 incorporates the sign standards from the Missoula County Subdivision Regulations, Primary Travel Corridor Standards, Article 3-14(3)(c)(ii) as follows:

- (ii) Each lot shall be limited to one free standing on-premise sign with a sign area no greater than fifty (50) square feet and a maximum height of twenty-two (22) feet to the top of the sign. Each business shall be limited to one wall sign. The area of the wall sign shall not exceed fifty (50) square feet plus one square foot for each one foot of lineal building frontage in excess of fifty (50) feet.

There are five sign variances being requested as follows:

1. Two 100 square foot monument ground signs (one near Highway 93 South and one near Buckhouse Lane).
2. Two additional wall signs, one on the north end wall and one on the south end wall of the building, maximum size of 150 square feet each.
3. A total of three wall signs for Loren's Carpets, one as allowed by ZD 43 as calculated in the Missoula County Subdivision Regulations Article 3-14(3)(c)(ii) and two not to exceed 120 square feet each.
4. To allow any single business which occupies lease space to have one wall sign, as calculated in the Missoula County Subdivision Regulations Article 3-14(3)(c)(ii), on each frontage wall of the building (southeast and northwest) for a maximum of two wall signs per business.
5. To allow each business to have window signs up to 15% of the individual business's ground floor windows for permanent signs and 25% for temporary signs, calculated separately on each side of the building.

As a comparison, for Variance #1, the highest sign is 12 feet tall and in most commercial areas, 22 feet tall is allowed. The text for the signs in Variance #2 is unspecified at this time.

Variance #3 is to allow two additional signs for Loren's Carpets. The building is V-shaped and they are asking for a sign on each frontage of the "V" and one in the rear off Buckhouse Lane.

The idea for Variance #4 is to allow a potential lessee business that go from one frontage of the building to the other frontage to have a sign on both sides so they can be identified from either side of the building. When all the space is leased, there would be eight 50-square foot signs, four on each side of the building.

Window signs were not addressed in ZD 43. The applicants have proposed a formula that generally meets with commercial standards in the County Zoning Ordinance.

No public comment was received either for or against these variance requests. The agency responses had no negative comments on the requests. Staff recommends approval of the variance requests.

Chairman Evans opened the public hearing.

Greg Midgett, Paradigm Architects, stated that he posted a drawing of the site with the variance requests shown. He was available to answer any questions.

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

Clem Work asked what proportion of the commercially zoned part of ZD 43 bounded by Buckhouse and the Bitterroot Highway does the Loren's Carpets building occupy.

Chris Mostad stated he was one of the principal in Loren's Carpets. The entire area of ZD 43 is approximately 77 acres and this property occupies approximately 10 acres. There is room for more a small amount of additional commercial development.

Commissioner Carey commended the proposal for not trying to max-out the sign standards. He felt it was very effective to show some moderation.

Vickie Zeier moved that the Planning and Zoning Commission recommend approval of the five variances for sign standards in Zoning District 43, as requested by Vaeroy, LLC . Commissioner Carey seconded the motion. The motion carried on a vote of 7-0.

Chairman Evans recessed the meeting of the Planning and Zoning Commission and reconvened the meeting of the Board of County Commissioners.

Commissioner Carey moved that the Board of County Commissioners accept the recommendation of the Planning and Zoning Commission and approve a request by Vaeroy, LLC for five variances from the sign standards in Zoning District 43. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Hearing (Certificate of Survey): Willison Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer for that parcel described as Tract 8-B of COS 2753, located in the southeast one-quarter of Section 1, Township 14 North, Range 21 West.

B.J. Willison has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 6.23 acres in size located near Frenchtown, Montana. B.J. proposes to create one approximately 2.01 acre parcel for transfer to her husband, Alfred G. Willison, for residential purposes and keep the remaining approximately 4.22 acre parcel for residential purposes as well.

The history of the parcel is as follows: Stanley C. Hendricksen entered into a written agreement for the sale of the parcel of land to B.J. Willison in August, 1995. A warranty deed was filed in September, 1999, deeding the parcel to B.J. Willison.

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

Chairman Evans opened the public hearing.

B.J. Willison was present and came forward to answer any questions the Board may have.

Chairman Evans stated the reason Mrs. Willison is present is to determine if this request is an attempt to evade subdivision review.

Colleen Dowdall stated the affidavit says the property is for personal use.

B.J. Willison stated she and her husband are separating their finances as they are both getting older.

Colleen Dowdall asked if either of the parcels is going to be sold.

B.J. Willison stated there is no intention of selling either of them.

Colleen Dowdall asked if either of the parcels is listed for sale.

B.J. Willison stated neither of the parcels is listed for sale.

Colleen Dowdall asked if any agreements had been entered into with anyone.

B.J. Willison stated that Realtors have contacted her, but no agreements have been entered into. Originally, the complete parcel was offered to the subdivider next door, who chose not to purchase the property. That means they are staying.

Colleen Dowdall stated there was another deed where additional property was purchased from Stan Hendrickson. She asked if that property was adjacent to this parcel.

B.J. Willison stated that when they originally purchased the property from Stan, it was divided into three parcels. They sold the lower parcel, which has now been purchased by Patchy, Inc. The upper parcel her son purchased.

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

Commissioner Curtiss moved that the Board of County Commissioners approved the request by B.J. Willison to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Chairman Evans stated that Mrs. Willison would receive a letter confirming today's action. However, this has not been reviewed for access or other criteria. This is just permission to divide the property; it does not give Health Department approval, zoning compliance and no guarantee of access or anything else.

**Hearing (Certificate of Survey): Harrington 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-1B as shown on COS 2281, a tract of land being a portion of Tract D-1 as shown on COS 1717, located in the northeast one-quarter of Section 25, Township 14 North, Range 21 West.

Frank Harrington has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 6 acres in size located near Missoula, Montana. Frank proposes to create one approximately 1 acre parcel for transfer to his son, Carl Allan Harrington (age 13), for residential purposes and keep the remaining approximately five area parcel for residential purposes as well.

The history of the parcel is as follows: Delos E. Robbins quit claimed 22 acres to Warren Block in July, 1995. Warren Block divided the 22 acre parcel and deeded six of those acres to Frank Harrington and Adrian D. Blakely, also in July, 1995. Kenneth Harrington divided the parcels into five tracts for transfer to his wife and two sons. There was also an occasional sale and a remainder. Adrian D. Blakely died in February, 2001. An acknowledged statement to terminate joint tenancy property of the decedent was filed September 16, 2003.

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

Chairman Evans opened the public hearing.

Frank Harrington stated that he did not know who Kenneth Harrington was. He did not know anything about him dividing the property. The transfer is to his son Seth Harrington, not Carl. He originally filled out the affidavit to transfer property to his older son, Justin. However, Justin has received a job offer at the University of Oregon, so he wouldn't be needing the property. Since all the work had already been done, he decided to transfer the property to his other son, Seth.

Colleen Dowdall asked who Carl Allen Harrington was.

Frank Harrington stated his son's name is Seth Allen Harrington. He did not know who Carl is. He called the County Attorney's Office lady to request the change to his other son.

Chairman Evans asked if Mr. Harrington intended to give this property to his son Seth.

Frank Harrington stated that was correct.

Colleen Dowdall asked how Mr. Harrington acquired title to the property.

Frank Harrington stated he purchased the property from Warren Block.

Colleen Dowdall asked if Mr. Harrington then divided the property.

Frank Harrington stated he did not divide the property. There was 22 acres and Warren Block subdivided it into a 6 acre, a 6.2 acre and two 5 acre tracts. He purchased the 6 acre parcel.

Colleen Dowdall stated this was not part of a subdivision. There was a Certificate of Survey that included three family transfers, an occasional sale and a remainder.

Chairman Evans asked if Seth was 13 years old.

Frank Harrington stated he will be 13 in October. The property will be put in a trust for him.

Colleen Dowdall asked if Mr. Harrington had transferred property to his grandsons.

Frank Harrington stated his daughter is living on a piece of property he has in Eugene, Oregon.

Colleen Dowdall asked if Mr. Harrington purchased the property with someone else.

Frank Harrington stated it was with Adrian Blakely. Mr. Blakely was put on the title in case something happened to himself. Mr. Blakely has since passed away and his name has been removed from the deed.

Colleen Dowdall asked if there are plans to sell a parcel or had he entered into any contracts for sale.

Frank Harrington stated he did not plan to sell and had not entered into any contracts.

Colleen Dowdall asked what Mr. Harrington's purpose was in creating the parcel.

Frank Harrington stated it would be for his son in the future. If something should happen to himself between now and when his son turns 18, there would be no confusion as to who owns this property, it wouldn't be a hassle. He is trying to get his affairs in order.

Commissioner Curtiss stated that on the map provided there were notes about where the trailer is and where it will be moved to.

Frank Harrington stated the property would need to be taxed and he will need to get it surveyed. When Warren divided this property, the homesite was situated at the other end of the property, with all the necessary approvals. He was going to give the property to his older son but he received a better job opportunity out of state.

Commissioner Curtiss asked if Mr. Harrington lived on the property.

Frank Harrington stated he lived up by the cul-de-sac.

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

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



Chairman Evans stated that Mr. Harrington would receive a letter confirming today's action. However, this has not been reviewed for access or other criteria. This is just permission to divide the property; it does not give Health Department approval, zoning compliance and no guarantee of access or anything else.

#### **Hearing: City-County Master Parks and Recreation Plan for the Greater Missoula Area**

Lisa Moisey, County Parks staff, stated she was here along with staff from the City Parks and Recreation Department asking for the Board to sign a Resolution of Intent to Amend the Growth Policy to Adopt the Master Park and Recreation Plan for the Greater Missoula Area, as amended by the Missoula Consolidated Planning Board on April 27, 2004.

This has been over a year long planning process that has culminated in a series of public hearings on this proposed plan. The City and County Parks Boards held a joint meeting on April 13, 2004 to discuss the plan. Both Boards recommended unanimously to adopt the plan as proposed by staff. On April 27, 2004, the Missoula Consolidated Planning Board held another public hearing on the Master Park Plan. Again, a unanimous recommendation came from that Board to approve the Plan as an amendment to the Growth Policy, with two conditions as recommended by staff. The Planning Board also made some recommended amendments to the documents which are included on the Request for Commission Action sheet. Donna Gaukler, City Parks and Recreation Department, will provide additional comments.

Donna Gaukler, Director of Missoula Parks and Recreation, stated she hoped this was the last stop on the long trail of developing a Master Park Plan for the Greater Missoula Area. It has been an extensive and exciting process. It provided City and County Park staff and the Office of Planning and Grants an opportunity to work with a group of 15 citizens that met monthly, and to work with EDAW, Inc., a consulting firm out of Fort Collins, Colorado.

The Master Parks and Recreation Plan for the Greater Missoula Area, when adopted as an amendment to the Growth Policy, will become the guide for land use as it relates to parks, trails, open spaces, conservation lands, the urban forest and recreation facilities and opportunities in the greater urban area, including the City of Missoula and an approximate 3 mile are around the City. The Plan does not include Lolo, Frenchtown or rural areas outside the boundary.

The Missoula area has and continues to grow approximately 3 percent per year and existing parklands will not meet the expanding needs of the community. Easy and equitable access to parks and recreation facilities is an expected and an attractive element of any community. A public and green infrastructure enhances community livability and desirability. Open spaces, parks, trails and the urban forest improve environmental health by providing cleaner air and water and preservation of wildlife habitat. Parks serve all citizens, regardless of demographics or diversity. Parks also provide for business, tourism, art and cultural interests and needs. Parks reflect the local culture and values.

The Comprehensive Master Park Planning Process, begun in May, 2003, included monthly work sessions of the Citizens Advisory Committee (CAC) with Parks and Recreation staff, OPG staff and the plan consultants. In addition, the University of Montana Bureau of Business and Economic Research conducted an urban area survey for the plan. Staff and CAC members conducted multiple interviews with frequent park user-groups and held a public open house and public workshop. The plan also includes comparison studies with peer cities, Montana cities, MT SCORP (Statewide Comprehensive Outdoor Recreation Plan), the Pacific Northwest and Rocky Mountain States and national trends and statistics.

In addition, prior and relevant plans dating back to the early 1990's are incorporated into this plan. The 1995 Open Space Plan continues to be a valid and well-used plan for acquisition of cornerstone conservation parklands. The Missoula Transportation Plan 2004 Update will provide the direction on commuter trails. The Wye-Mullan Plan, as it pertains to parks, open space and trails, and the Master Parks and Recreation Plan have been jointly developed.

An important component of this plan is to identify, label and map all parklands owned and managed by the City and County, in order to update and refine the previous City and County park inventories. The plan also identifies areas in need of additional parklands, open space, trails or trail connections and recreation facilities, based on a standard level of service.

The plan defines Level of Service (LOS) based on population and geography. Each citizen should be within one-half mile of a neighborhood park and within 1.5 miles of a community park. Neighborhood parks are the backbone of the community. The plan further defines the need for access, sizes and amenities important to achieving desirable results from parks.

The extensive study, public involvement and inventory process identified several needs. Some of those needs include the continued acquisition of parkland to meet standard levels of service, the need for improved maintenance of some facilities, the need for indoor recreation and cultural facilities and the need for new trails and trail connections to name a few.

Overarching goals and associated policies were developed to guide future decisions related to development, access and acquisition. Emphasis areas include:

- Facilities and lands of larger neighborhood and community-wide significance to better meet desired levels of service while keeping on-going maintenance costs manageable.
- Protecting and enhancing the natural environment.
- Developing funding alternatives to meet the needs of a growing urban area.
- Appropriate, high-quality, varied and equitably distributed parks, recreation facilities and trails.
- Importance of collaboration, monitoring and assessment of existing and new parks and services for success.

As with any plan, the effectiveness and success will be measured by the community's ability and willingness to implement the plan. This plan provides recommendations and directs actions, including priorities, for the near and more distant future. The plan recommends tools for funding and regulatory changes that could enhance the community's ability to provide at least current levels of service. The plan provides direction for decisions related to cash-in-lieu of parkland.

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Sue Brown, 1504 Woods Gulch Road, stated she was the County representative on the Citizens Advisory Committee. County Parks has committed \$10,000 toward this effort as they feel it is important to the community. She was impressed with the amount of time, energy and thought that the citizens put forth so the community would have a plan that suits its needs. She is also proud of the leadership of both City Parks and County Parks, Lisa Moisey, and the committee for working through the draft from the consultant. This plan was developed by Missoulians for Missoula. She urged the Board to adopt this as part of the Growth Plan. She hoped that as County areas are developed they will have 5 acre parks similar to Bonner Park and that the Upper Linda Vista parks will be used as a model for what developers can do for the community. The time to create the opportunity for usable parks is when development occurs. It is much more difficult after the fact.

Minie Smith stated she was a member of the Citizens Advisory Committee. She echoed what Sue Brown said and urged the Board to adopt the plan.

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

Commissioner Carey asked if the recommendation to adopt the plan includes the amendments made by the Planning Board.

Lisa Moisey stated that it does include those amendments.

Commissioner Curtiss stated that one of the recommendations of the Planning Board says "including bringing existing facilities up to ADA standards." Would that be too restrictive or should it be to assess the need of bringing them up to ADA standards.

Donna Gaukler stated that was an addition to Goal 4.3. Each site is visited to look at any repairs that may be needed to playgrounds, restrooms, etc. ADA issues are noted and are required by law with any type of major renovation or new construction. Staff assumed the ADA issues, but the citizens felt it should be part of the goal. It does not cause any conflicts; it just asserts some importance to the issue.

Commissioner Curtiss stated that if it is noted there is a need for ADA compliance, then it is required to be brought to that standard.

Donna Gaukler stated that at the point of remodel or to meet a citizen's need upon request, ADA compliance is required, which is already done with programming or provision.

Commissioner Carey stated Goal 6 alludes to public/private partnership. Will there be efforts to get landowners to donate land for parks.

Donna Gaukler stated that does work and some of the most significant parks in Missoula have been donated over the years. That is a directive from the Citizens Advisory Committee, that staff do everything possible to pursue philanthropic opportunities.

Commissioner Carey asked if a gift could be structured to have beneficial tax implications for citizens.

Donna Gaukler stated they work with the American Public Land Exchange to get tax benefit advice.

Chairman Evans stated that on Page 4-6 regarding park dedication, the last sentence reads: "Apply fee in lieu of parkland." Based on the law, is that wording proper.

Colleen Dowdall stated it is not a fee, it should be "cash-in-lieu of parkland." She also understood there may be non-substantive changes made for purposes of language accuracy, clerical or grammatical correction.

Donna Gaukler stated they are other places where the wording is not quite right but none of them have legal implications.

Colleen Dowdall stated the motion could include the amendments from Planning Board and with grammatical corrections. The "fee" versus "cash" is not a substantive change, it doesn't change the intent of the plan.

Commissioner Carey moved that the Board of County Commissioners approve the Resolution of Intent to Adopt the Master Park and Recreation Plan for the Greater Missoula Area as an amendment to the Missoula County Growth Policy, as amended by the Missoula Consolidated Planning Board on April 27, 2004, and with non-substantive grammatical corrections to follow. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

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

Resolution No. 2004-075 – Following the Public Meeting, The Commissioners signed Resolution No. 2004-075, dated May 19, 2004 a resolution of intention to adopt the Master Park and Recreation Plan for the Greater Missoula Area as an Amendment to the Missoula County Growth Policy.

THURSDAY, MAY 20, 2004

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

Plat – The Commissioners signed the Plat for Holden Addition, a five lot subdivision of Tract B, COS 5456, located in the NE¼ of Section 21, T 12 N, R 17 W, PMM, Missoula County, a total area of 8.33 acres, with the owner/developer being John D. Holden.

Plat – The Commissioners signed the Plat for Neilson Addition, a five lot minor subdivision plat located in Government Lot 4 in Section 30, T 14 N, R 20 W, PMM, and in the SE¼ of Section 25, T 14 N, R 21 W, PMM,

Missoula County, a total gross area of 158.35 acres, with the owner of record being Magnolia Enterprises, LLC of Tract 1, and Barbara Jean Howell, Trustee of the Revocable Inter Vivos Trust of Virginia Bell Neilson.

#### ADMINISTRATIVE MEETING

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

Amendment – The Commissioners signed Amendment Number One to Task Order No. 04-07-301-010-0 to the Master Contract between the Montana Department of Public Health and Human Services and Missoula County, increasing the number of women to receive breast and cervical cancer screening services. In addition, the total amount of the contract is increased from the original amount of \$86,000 to \$92,900. All other terms and conditions are unchanged or set forth therein. The document was returned to Terry Delgadillo at the Partnership Health Center for further signatures and handling.

Board Appointment – The Commissioners approved and signed a letter, dated May 20, 2004 reflecting the appointment of Roberta J. Smith, Missoula, as the “2<sup>nd</sup> alternate” member of the Missoula Aging Services Governing Board. Ms. Smith’s term will commence immediately and run through December 31, 2006.

Other items included:

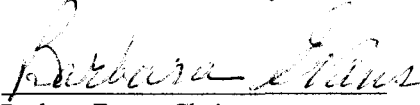
- 1) Commissioner Carey provided the BCC with information regarding Senior Cooperative Housing issues.

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

#### FRIDAY, MAY 21, 2004

The Board of County Commissioners did not meet in regular session. Commissioner Carey was in Libby attending a meeting of the Mental Health Board. Commissioner Curtiss attended a Juvenile Detention Task Force Meeting held at the Board of Crime Control in Helena. Commissioner Evans was out of the office all day.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

#### MONDAY, MAY 24, 2004

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

Claims List – The Commissioners signed the Claims List, dated May 19, 2004, with a grand total of \$7,682.56. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed three (3) Claims Lists, dated May 20, 2004, with the following grand totals:

- 1) \$28,289.18;
- 2) \$4,795.31; and
- 3) \$13,659.27.

The Claims Lists were returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated May 24, 2004, with the following grand totals:

- 1) \$68,423.02; and
- 2) \$58,133.99.

The Claims Lists were returned to the Accounting Department.

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming S.L. Sewer District, Seeley Lake, as applicant for Seeley Lake Sewer District Warrant #1006 payable to the Department of Natural Resources in the amount of \$250.00 (for Grant application fee), which was not received in the mail. No bond of indemnity is required.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Michael McMeekin, for the month ending April 30, 2004.

Signature Page – The Commissioners reviewed and signed the Larchmont Claims Signature Page for the A/P Invoice Register dated May 20, 2004, in the amount of \$24,041.07. The Signature Page was returned to the County Auditor.

Agreement – The Commissioners signed a Walkway Easement Modification Agreement, dated November 24, 2003 between Shelter West, Inc., Bonnie Hamilton, Kevin and Rebecca Larson, Paul and Trish Marcum, Joyce Piquette, E. Mark and Mary Mineo, A. Clifford Edwards and Missoula County, pursuant to a plat adjustment for Leonard’s Clark Fork Estates. The adjustment, approved by the BCC on June 2, 2003 moves the Public Walkway Easement from its current location between Lots 3 and 4 to its new location between Lots 5 and 6. Note: This document was recorded by WGM Group, Inc. on May 18, 2004 (before the realization that the BCC had not signed it). The document will be re-recorded.

Variance Request and Amendment – Per recommendation of the Office of Planning and Grants at their Planning Status meeting on May 24, 2004, the Commissioners approved and signed a letter (dated May 24, 2004) to Ron Ewart, Eli & Associates, Inc., approving his request for a variance from Missoula County Subdivision Regulations (regarding

pedestrian connections) and to amend Condition 2 (regarding width of the private access and utility easement) of Braach Acres Subdivision.

**TUESDAY, MAY 25, 2004**

The Board of County Commissioners met in regular session; all three members were present. In the evening, the Commissioners held a Public Discussion with area residents regarding the proposed Code Enforcement Program for Missoula County. The meeting was held at the Frenchtown Fire Station.

Claims List – The Commissioners signed the Claims List, dated May 24, 2004, with a grand total of \$29,345.48. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Contract – Chairman Evans signed a Montana Department of Administration Standard Audit Contract, dated May 12, 2004, between Missoula County and Elmore & Associates, P.C. for auditing services for the year ending June 30, 2004. The total amount shall not exceed \$70,000. The term will be July 1, 2003 through June 30, 2004. All other terms and conditions are set forth therein. The document was forwarded to the Local Government Services Bureau for signatures and return of one original.

Resolution No. 2004-076 – The Commissioners signed Resolution No. 2004-076, dated May 25, 2004 a resolution to rezone the Grove Street property from C-RR3 (residential – 4 dwelling units per acre) to the Grove Street Special Zoning District (residential). The property is described as that portion of Chicago, Milwaukee, St. Paul and Pacific Railroad Company's 100 foot wide right-of-way ("ROW") across Lots 43 and 44, Cobban and Dinsmore's Orchard Homes Addition ("CDOH"), and all of Lots 43 and 44 of CDOH lying northerly of the ROW consisting of Reserve Street in Missoula County, Montana, located in the NE¼ of Section 19, T 13 N, R 19 W, PMM.

Easement – Chairman Evans signed an Easement, dated May 20, 2004 between Farmers State Bank, Victor, Montana, and Lolo Rural Special Improvement District 901, of the Missoula County Department of Public Works, for the bank's connection to the water and sewer main. All other terms and conditions are set forth therein. The document was returned to Public Works Director Greg Robertson for further handling.

Petitions – The Commissioners (with Chairman Evans opposing), approved and signed three (3) Petitions For Annexation to the City of Missoula, dated May 25, 2004, annexing three parcels in El Mar/New Meadows and Golden West in order to facilitate hooking up to the Mullan Road Corridor Sewer backbone. The parcels are described as follows:

- 1) Golden West #1 – Utility Park 15-13-20, Geocode #219915401010000;
- 2) Park in 15-13-20, Geocode #219915408030000; and
- 3) (Exempt) – New Meadows - Park in 15-13-20, Geocode #219915101080000.

The documents were forwarded to Jolene in the City Public Works Office for further handling.

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Big Sky Mechanical to bring the Missoula County Courthouse Annex basement online with the new boilers, install cooling into the classroom, and connect the existing heating and cooling units to the STAEFA control system. This work will allow better control of the heating and cooling in the basement. The total amount shall not exceed \$45,670 (which was funded in the 2004 budget). The term will be June 1, 2004 through August 31, 2004. All other terms and conditions are set forth therein.

Grant Money – The Commissioners approved the County Park Board's recommendation to award Spring 2004 Matching Grant funds in the total amount of \$12,305.00 to improve Missoula County parks and community recreation areas outside the City of Missoula, to the following:

- 1) Seeley Lake Community Council (\$1,475);
- 2) Seeley Lake Lions Club (\$1,000);
- 3) Shelby Addition – Lolo Organizing Opportunities for Play (\$1,000);
- 4) Bonner Development Group for Two Rivers Memorial Park (\$530);
- 5) Westside Little League (\$2,300);
- 6) Backwoods BMX (\$3,000); and
- 7) Bonner School – Kelly Pine Field (\$3,000).

The document was returned to Lisa Moisey, County Parks Coordinator, for further handling.

Letter – The Commissioners signed a letter, dated May 12, 2004 to Chris Lorentz, Montana Fish, Wildlife and Parks, Missoula, voicing their strong concerns about the proposed changes to the Blackfoot River Recreation Corridor Landowners Agreement, as described in a March 19, 2004 letter from FWP. The BCC supports continued efforts to protect the river corridor while balancing public and private interests.

Letter – The Commissioners approved and authorized CAO Ann Mary Dussault to sign, a letter dated May 25, 2004 to Linda McCarthy, Missoula Downtown Association ("MDA"), regarding MDA's proposed assessment schedule for the Business Improvement District ("BID"). The letter sets forth several comments and questions that arose during the

Commissioners' discussion of the assessment schedule. The letter also reiterates the BCC's support of the BID, but would like to have further discussion of the items set forth.

Other items included:

- 1) Public Works Director Greg Robertson provided the BCC with information regarding a) the Lolo Sewer Extension; b) the Mullan Corridor Sewer; and c) the Transportation Plan.

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

**WEDNESDAY, MAY 26, 2004**

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

Claims List – The Commissioners signed the Claims List, dated May 24, 2004, with a grand total of \$43,352.90. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated May 25, 2004, with the following grand totals:

- 1) \$20,956.53; and
- 2) \$8,991.70.

The Claims Lists were returned to the Accounting Department.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Eric Anne, Dutton, Montana as Principal for Missoula County Public Schools Warrant #138630, issued April 30, 2004 on the MCPS Payroll Fund in the amount of \$219.79 (for wages), which cannot be found.

**CHIEF ADMINISTRATIVE OFFICER MEETING**

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

Resolution No. 2004-078 – The Commissioners signed Resolution No. 2004-078, dated May 26, 2004, a Budget Amendment for the Health Department reflecting funds received in the amount of \$17,753 from the Early Childhood Comprehensive Systems Contract No. 04-07-531-009-0. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Agreement – The Commissioners signed a Memorandum of Agreement, dated May 26, 2004 between the Missoula City-County Health Department and the Missoula County Attorney's Office for reimbursement by the DUI Task Force to the County Attorney's Office for the work they provide. The total amount shall not exceed \$2,200. All other terms and conditions are set forth therein.

Agreement – The Commissioners signed one (1) Sanitary Sewer Grant Program Agreement for Partial Assistance to Owner-Occupied Households Secured by Real Property, dated May 21, 2004, with Earl T. and Sharon M. Smith, 4 Canyon View Drive, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. All sewer development fees and on-site connection costs and fees are as set forth therein.

Letter – The Commissioners signed a letter, dated May 26, 2004 to Chris Behan and Jill Dunn of the Missoula Redevelopment Agency ("MRA") asking for their participation in the amount of \$101,000 (50% of total) for projects which include: 1) Repair exterior of Public Defender and Youth Court Buildings; 2) Fire alarm upgrades; 3) ADA Accessibility; and 4) Sidewalk repair. MRA's participation would still result in a net savings of nearly \$90,000 over the originally approved County Courthouse request in May of 2002.

Agreements – As a result of the bid award related to Solicitation No. 0403-01, Chairman Evans signed two (2) Agreements, dated May 26, 2004 between Missoula County and Blackfoot Communications for the provision of Local Telephone Service as follows:

- 1) Installation of point-to-point T1.5 service between the detention facility at 2340 Mullan Road and the Courthouse for a term of 120 months; and
- 2) Installation of a 100 pair copper cable between the Courthouse and the Health Building.

The total installation charges are \$70,000. All other terms and conditions are set forth therein.

Agreement – The Commissioners signed an Agreement, dated May 26, 2004 between the Missoula County Airport Industrial District and JTL Group, Inc. for the Missoula Development Park, Phase 3B (West Harrier) Sewer Main Extension (Schedule I) and Street Construction (Schedule II) – Project #6420-01. The total contract price is \$213,027.00. All other terms and conditions are set forth therein. The document was returned to Barb Martens in the Projects Office for further handling.

**PUBLIC MEETING – May 26, 2004**

The Public Meeting was called to order at 1:30 p.m. by Commissioner Barbara Evans. Also present were Commissioner Jean Curtiss, Commissioner Bill Carey, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall and County Public Works Director Greg Robertson.

**Pledge of Allegiance**

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**Public Comment**

None

**Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$366,929.36. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Bid Award (Information Services): Data Communications Connections**

Jim Dolezal, Information Services Manager, presented the staff report.

Missoula County did an RFP for telephone and data communications to connect to 9 remote sites in the City and County. Bids were opened on March 1, 2004, with four bidders responding: Blackfoot Communications; Bresnan Communications; Cutthroat Communications; and Qwest.

The County currently has T-1 communication lines from Qwest to provide phone service through the County phone switch to the Jail, the County Road Shop, the Extension Office, the Library, City Waste Water, City Fire, City Streets, City Parks and Rec and City Parking Commission.

The nature of the RFP is to have the vendor provide communications services to Missoula County similar to what Qwest is currently providing, but adding some additional capabilities in the form of dark fiber from the County to the Jail and the County Road Shop and be able to handle Voice Over Internet Provider in the event the County chooses to deploy it.

One of the options was to also provide data service for the City to their remote locations. This was added to try to get a better price for both the City and County.

The four vendors responded with a wide range of solutions with lots of options and pricing models. This resulted in many meetings, phone calls and e-mails going over all the pros and cons of each option. All of the vendors put a lot of work into their different proposals and should be commended for their professionalism. The representatives from each vendor are great assets to their companies. Any of the vendors would be great to work with and Missoula County will probably do business with them in the future on some different communication needs.

The final decision came down to which company will provide the service that best meets the County's needs currently and over the next few years. The inclusion of dark fiber by Blackfoot at a very attractive price was the item that made the choice obvious. After consideration and review of the proposals, it is the recommendation of the Information Services Department to award the bid to Blackfoot Communications. This is a 3 year contract for eight T-1's and a 10 year contract for dark fiber from the Courthouse to the Jail and County Road Shop. The \$70,000 upfront cost is for installation of the fiber and is under budget. The monthly cost is \$2,160.

Chairman Evans asked for public comments. There were none.

Commissioner Curtiss stated for the record that her husband works for Blackfoot Communications and although he has no connection to this part of the business, she would recuse herself from the vote.

Commissioner Carey moved that the Board of County Commissioners approve awarding the bid for telephone and data communications to Blackfoot Communications in the amount of \$70,000 upfront and \$2,160 per month, as the lowest and best proposal. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

**Hearing (Certificate of Survey): Savik Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer for that parcel described as Tract 5A of Elk Watch Estates, Lots 1A and 2A, located in the northwest one-quarter of Section 36, Township 15 North, Range 21 West.

Marlen G. and Wendy F. Savik have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately six acres in size located near Frenchtown, Montana. Marlen and Wendy propose to create one approximately two acre parcel for transfer to their son, Ryan M. Savik, for residential purposes and keep the remaining approximately four acres for residential purposes as well.

The history of the parcel is as follows: A warranty deed was filed by Alfred and Rosemary Deschamps in April, 1987, deeding land to Marlen G. and Wendy Faye Savik. In February, 1998, the Saviks filed COS 3645 and divided the land to create a parcel for occasional sale. In 1999, the Saviks gifted five acres to Wendy's parents. In 2001, the Saviks filed a plat for the Elk Watch Estates Subdivision. In 2003, a plat for Lots 1A and 2A in the Elk Watch Estates Subdivision was filed. The original parcel that the Saviks purchased has a remainder of approximately six acres that was not included in the Elk Watch Estates Subdivision.

The request was delayed as there was some concern that it was within a platted subdivision. It was determined that the parcel is outside the platted subdivision. Some of the platted subdivision was relocated from Elk Watch Estates into the adjoining parcel.

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act, except as listed below:

COS 3377	09/19/1998	Mortgage Exemption
COS 3645	02/07/1998	Occasional Sale with remainder
COS 3812	08/02/1999	Retracement
COS 4540	11/24/1999	Family Transfer to Monty and June Kamps (parents)

Chairman Evans opened the public hearing.

Marlen Savik stated the information and pertinent facts presented were correct. His son will be graduating from the University of Montana and would like to stay in Montana.

Chairman Evans asked if Mr. Savik intended to transfer the land to his son.

Marlen Savik stated that was correct.

Commissioner Curtiss stated that Mr. Savik previously gifted land to his in-laws.

Marlen Savik stated that was correct. They have built a home and live next door.

Commissioner Carey asked if the transfer would occur within the next year.

Marlen Savik stated that was correct.

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

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

Chairman Evans stated that Mr. Savik would receive a letter confirming today's action. However, this has not been reviewed for access or other criteria. This is just permission to divide the property, it does not give Health Department approval, zoning compliance and no guarantee of access or anything else.

#### **Hearing (Certificate of Survey): Denman Family Transfer**

Prior to the Public Meeting, the Denman Family Transfer request was withdrawn by the applicant.

#### **Approval: Final Bond Resolution for Missoula County Limited General Obligation Bonds, Series 2004**

Dale Bickell, Chief Financial Officer, presented the staff report.

This is the Final Bond Resolution to approve the sale of \$995,000 of bonds to complete Phase I of the Western Montana Fair's Ice Rink Facility project. This bond issue pays for the enclosure of the current rink and the metal work and roof structure for the second rink that will be constructed this summer. D.A. Davidson, acting as the County's financial adviser, is selling bonds for the County. On Monday afternoon, a conference call was conducted to set the rates. However, yesterday, the rates needed to be adjusted approximately 20 basis points because the market was not as favorable as anticipated. This resulted in an additional \$150 in annual debt service, or \$3,000 over the life of the project.

Commissioner Curtiss stated for the record that payments for this bond will be made by the people who run the Ice Rink.

Dale Bickell stated that although this is a limited obligation bond and is payable by the County General Fund, there is a revenue source outside of taxes that will pay for it.

Chairman Evans asked for public comments. There were none.

Commissioner Curtiss moved that the Board of County Commissioners approve the Final Bond Resolution and Bond Purchase Agreement for the Western Montana Fair Ice Rink Facilities project. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

#### **Hearing: Petition to Annex Property into Frenchtown Rural Fire District (Rosco Road Properties)**

Kathy Wahl, Clerk and Records Office, presented the staff report.

A petition has been received by the Clerk and Records Office to annex a parcel 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 tax paying freeholders within the area described, thereby meeting the requirements of 7-33-2125 MCA for annexation of adjacent territory.

The area to be annexed is described as follows:

"Rosco Road Properties" located in Sections 5 and 6, Township 14 North, Range 22 West and Section 32, Township 15 North, Range 22 West, in the County of Missoula. (For complete legal descriptions, see map on file in the Clerk and Recorder's Office).



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

Commissioner Curtiss moved that the Board of County Commissioners approve annexation of "Rosco Road Properties" located in Sections 5 and 6, Township 14 North, Range 22 West and Section 32, Township 15 North, Range 22 West, in the County of Missoula, into the Frenchtown Rural Fire District. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Conditions of Approval: Carlton Heights-Maple Creek Addition #2 (Alternate 3) – Postponed from April 21, 2004 – POSTPONED TO JUNE 16, 2004**

Chairman Evans announced that the discussion on the Conditions of Approval for Carlton Heights-Maple Creek Addition #2 (Alternate 3) had been postponed to June 16, 2004.

**Consideration: Chief Joseph Addition (4 lots on 81.66 acres) – Sleeman Creek Road, west of Lolo**

Tim Worley, Office of Planning and Grants, presented the staff report.

Fred and Susan Reed, represented by Nick Kaufman of WGM Group, Inc., are proposing Chief Joseph Addition, a 4 lot residential subdivision on 81.66 acres in Sleeman Gulch, west of Lolo. This proposal is a subdivision of Parcel 3 of Certificate of Survey 5514, a common boundary line relocation that was filed in early 2004, resulting in parcels of 5 acres, 2.5 acres and 81.66 acres, respectively. Lots 1 through 3 are adjacent to Sleeman Creek Road and are proposed to be between 1.58 acres and 1.63 acres. The fourth lot is proposed to be 76.81 acres.

The area is unzoned and there are two Comprehensive Plan designations for the property as recommended in the 2002 Lolo Regional Plan. One is for a recommended density of 1 dwelling unit per 10 acres and the other, for the more remote portions of the property, is Open and Resource with a recommended density of 1 dwelling unit per 40 acres. The overall density of this development amounts to 1 dwelling unit per 20 acres. The subdivision does not comply with the 1 per 10 recommendation for the smaller lots adjacent to Sleeman Creek Road, but does show some degree of compliance with the Open and Resource cluster standards in the Lolo Regional Plan.

Sleeman Creek Road provides access to the subdivision. It is an 18 foot wide, off-site, gravel road. The distance to Highway 12, the nearest public paved road, is greater than 500 feet, therefore, paving is not required on Sleeman Creek Road according to the subdivision regulations. The 18 foot width does require a variance as the regulations require a 24 foot width for private roads. Public Works did not object to the variance request and staff recommends approval. Staff does recommend a condition that addresses road maintenance for the lots adjacent Sleeman Creek Road. Staff is also recommending a condition that the developer provide proof of legal access. The Subdivision Regulations require pedestrian connections and the developer has requested a variance from that standards. Public Works does not object to the variance request due to the substantial distance from existing facilities and staff is recommending approval.

The driveway that provides access to Lot 4 was the item that received the greatest scrutiny with this proposal. It is 2,200 feet in length and has six sections, totaling 1,139 feet, that exceed a 10% grade, with the steepest grade shown at 30%. Nick Kaufman has provided an exhibit that shows revised grades for this driveway. However, there are still sections that exceed the 10% grade requirement in the Subdivision Regulations. As a result, a variance to driveway grade standards was required. Staff is recommending conditional approval of the variance. The condition recommended for driveway improvements states that: "Plans for driveway improvements be reviewed and approved by the Missoula Rural Fire District for excessive grade, unobstructed vertical and horizontal clearance, construction of a turnaround at the end of the driveway if necessary, an engineered surface that supports fire equipment in all seasons and weather conditions, and that all required improvements must be installed prior to final plat approval. If the standards are not met prior to that time, a statement must be placed on the plat and in the covenants that the subdivision does not meet emergency vehicle access standards."

The applicant is proposing residential fire sprinkler systems for the new homes on Lots 1 through 3. The Development Covenant states that the subdivision will meet Wildland/Residential Interface (WRI) standards. Lot 4 is in coniferous timber, but the home itself appears to have adequate cleared perimeter and meet WRI standards. Staff is recommending an additional condition that visible addressing signs meet Rural Fire District standards. A portion of every lot includes a No Build Zone, with the majority on Lot 4, which is in excess of 25% slope. Staff is also recommending the standard language pertaining to radon safety be inserted in the Development Covenant.

Staff recommends approval of the Chief Joseph Addition.

Nick Kaufman stated that remote sensing reconnaissance level data is relied on for topography. The grade of the driveway presented with the preliminary plat was pulled from the USGS contour map and did not account for cut and fill, so the driveway shows grades in excess of 30%. During the boundary relocation survey process, the survey crews tied, vertically and horizontally, the Reed's driveway. The driveway profile was redrawn from this information showing the average grade of 7%. There are some grades that exceed 13%. It is important that the driveway provides vertical clearance for emergency vehicles, the appropriate width and a bearing capacity to support those vehicles. The Rural Fire District went to the site yesterday with their largest pumper truck. They negotiated the driveway to the satisfaction of the Assistant Fire Chief Curt Belts. Mr. Belts also had his crew take a water tender up the driveway to make sure it was appropriate as well. There are two existing turn outs on the driveway, one at the end and one on a switchback. They will need to provide an extra turnout to meet the standards for the Rural Fire District. The Reed's attorney is preparing easement exhibits for the portion of the driveway that crosses the northerly two lots. Those will be filed before the plat is filed. He asked the Commissioners to approve a phasing plan with the subdivision with Lots 1, 2 and 3 in Phase 1, which will be platted in 2004, and Lot 4 in Phase 2, which will be platted no later than 2005. The Reeds originally had three 20 acre tracts. The upper westerly area is the most sensitive, timbered, steeper region of the property. A common boundary was relocated to take two long, narrow 20 acre tracts and put the building sites along Sleeman Creek Road. The only buildable area on Lot 4 is the area around the Reed's home and out buildings. The entire remainder of the 76 acre parcel is a No Build Zone. With the Reed's existing home, this subdivision is requesting three additional lots along Sleeman Creek Road. Those building sites are out of the timbered area and easily accessed by emergency vehicles.

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Chairman Evans asked for public comments.

Al Kolata, 11580 Sleeman Creek Road, stated that his driveway is directly across the road from this proposed subdivision. The sign about this meeting blew off about May 4th. He told Mr. Worley about that on May 4th and again on May 7th, but the sign was never replaced. He did not know how many of the neighbors were aware of this meeting. Also, before the sign blew away, it was very misleading; it said 4 lots on 81 acres. Without looking at the little drawing, it leads to the assumption that each lot is 20 acres. Those are some of the problems with the way this has been handled so far. As was mentioned, a boundary relocation was done which broke off two other tracts, one about 5 acres and one about 2.5 acres, in addition to these three lots, which are across the road from his house. The law is being followed, but should it be done this way. With the boundary relocations, there are actually 5 building sites along the road. The building sites will have to be very close to the road, a lot closer than any other properties along the road. His house is three to four times farther from the road than these homes will be and he gets excessive dust and noise from the road. People in these homes will have a much worse problem with noise and dust. His next concern is about the impact on water for Sleeman Creek Road. Excavation for these new homes could affect the water flow and run-off in the spring. Right now, all of the run-off goes into the Reed's property. Will excavation cause his property to receive more run-off and cause flooding? About a year ago, Fred Reed approached him about drilling a well on his property for Mr. Reed's use. He decided against letting Mr. Reed do so. Mr. Reed then drilled one on a neighbors property across the road. That shows that underground water on that side of the road is not sufficient to maintain five new houses. As stated, his house is directly across the road from this proposal. He would like to know what kind of impact it will have on access to his house and traffic on the road. Will this hurt his property value. About a year ago, a Citizen Initiated Zoning District was formed and he was stuck in that district. He cannot divide his land into parcels smaller than 10 acres. Mr. Reed was excluded from the Zoning District because he was going to put his property into a conservation easement. Mr. Worley said that nothing has been filed regarding that conservation easement yet. He wondered what was happening with that conservation easement. He also felt he was treated one way and the Reeds were treated a different way.

Nick Kaufman thanked Mr. Kolata for taking the time to raise his concerns. The three 20 acre tracts he mentioned earlier all went from the west border of the property and all had frontage onto Sleeman Creek Road. Without doing any boundary relocations, the Reed's could have put three homes adjacent to the road. They could have given a gift to a family member or created mortgage parcels to secure loans. They chose to do neither. A boundary relocation is done by submitting an affidavit to the County Attorney's Office. It is reviewed to make sure there is not an evasion of the Subdivision and Platting Act. The boundary relocations were approved by the County Attorney's Office. The Certificates of Survey were prepared and sanitary restrictions were lifted by State and local health authorities. This started as three lots and ended as three lots. Two new lots were not created and two new building sites on Sleeman Creek Road were not created. There has always been the ability for three building sites on Sleeman Creek Road. He could not comment on the sign or lack thereof, his firm does not deal with that. Ray with Professional Consultants Inc. and also a member of the Lolo Community Council, e-mailed a number of the property owners in Sleeman Gulch, and had an electronic discussion about the proposed subdivision. This is a summary subdivision, no public hearing is required. Most of the people in Sleeman Gulch had knowledge of this proposal. A storm drainage report is included in the packet which indicates that run-off will stay on and be accommodated in the swale on the Reed's property. It must be demonstrated to both State DEQ and the local Health Department that there is adequate area for drainfields and replacement areas and water for domestic use. Those applications have been submitted and are being reviewed. The homesites are in excess of 200 feet from Sleeman Creek Road. Someday, Sleeman Creek Road may be improved via an RSID. If the dust becomes too bad, residents can apply dust suppression. Mr. Kolata brought up some good points which have been mitigated. The last issue is the Zoning District. In the State of Montana, private property rights are recognized. When Zoning Districts are proposed, public hearings are held and public comments are heard. Residents also have the right to protest if they are included in a Zoning District they don't want to be in. For whatever reasons, the Reed's property was not included in the Zoning District. He did not know if there would be a conservation easement in the future on the Reed's property. It has been discussed and it is not precluded. On the 76 acre parcel, all but a few acres is a No Build Zone, which has the same effect as a conservation easement but is better for the County. The No Build Zone cannot be rescinded whereas a conservation easement can. In effect, there is conservation of the majority of the 76 acre parcel and placement of homes next to the road where there already are impacts and traffic. If these 4 lots were all 20 acres than ran up the hill, each individual owner would be responsible for the stewardship of the land. It is a much better land use practice to have one property in charge of the stewardship of the large, steep ground. If the lots were bigger and had multiple owners, the impact would be less stewardship, maintenance and weed control.

Chris Barnes, 10870 Sleeman Creek Road, stated there was a recommendation for maintenance of the road. He would like to know more about that. He would urge the Commissioners to accept the variance requests for road width and pedestrian connections. It may be inevitable that someday the road will be widened and paved, but he hoped not while he was living there.

Tim Worley stated that the second recommended condition of approval reads as follows: "The developer shall provide a road maintenance agreement for Sleeman Creek Road, including snow removal, between the lot owners of this subdivision, which shall be reviewed and approved by the County Attorney's Office prior to final plat approval." This addresses the frontage of this subdivision on Sleeman Creek Road.

Commissioner Carey asked which condition addressed the RSID waiver for Sleeman Creek Road.

Tim Worley stated the RSID waiver is on the face of the plat, however, Sleeman Creek Road is private. The waiver would not address improvements as long as the road remains private.

Commissioner Carey stated that Curt Belts has tested the driveway on Lot 4 under good conditions. He asked what the District's position is on the steep grade during the winter.

Curt Belts stated that the Reed's property was annexed into the Fire District some time ago, long before subdivision standards got to where they are for driveway access. Because they need to be annexed to get homeowners insurance, they are told that the Fire District will do their very best to get there at all times of the year, however, during the winter they may not be able to make it. If a homeowners says they have trouble getting up their driveway in their own vehicle, the

District will tell them that their response cannot be guaranteed. They are offered suggestions on how to improve their driveways. They have been to the Reed's property before, but yesterday was the first actual test. He discussed with Mr. Kaufman that winter access on this driveway will still be "iffy." That same conversation did occur between the Reed's and the former fire chief Bill Reed. There are other properties in the district with similar situations.

Commissioner Carey asked about the district's liability in these situations.

Curt Belts stated that according to the District's attorney, he believes they are not liable, as long as the homeowner is made aware of the situation.

There were no further public comments.

Commissioner Carey stated, for Mr. Kolata's benefit, that the water issues do not fall within the purview of the Board of County Commissioners. State law does not allow the Commissioners to address those issues.

Commissioner Curtiss stated there is a letter in the packet from Jeff Schalow, Long Range Planning at the Office of Planning and Grants, with several concerns. One is that proposed Lot 3 already has some constraints, it has a barn and a well on it and part of the road will go through it. She was concerned about the density. There will be five residences along Sleeman Creek Road if these three new lots are approved. The people in that area initiated zoning because they wanted a more rural land use pattern, although this piece of property is not within the zoning district. Long Range Planning mentioned that there is not a land management plan for the No Build Zone. There is also not a development agreement that limits future division of the land. This land seems to have already reached its maximum subdivision. Because there is no land management plan, it does not state whether structures, fences or roads are prohibited.

Nick Kaufman stated that the entire parcel, if the subdivision is approved, will not have the opportunity to do a gift to a family member. During the last Legislative session, the ability to create parcels by mortgage was eliminated. Because the upper portion of Lot 4 has steep slopes over 25%, the ability to do a drainfield, other than by reserving an easement on the lower portion of the property, precludes another building site. In addition, there is the No Build Zone that circles the existing buildings and reserves the rest of the property. The remaining tracts on Sleeman Creek Road are less than 2 acres in size. The Sanitation in Subdivision Act and the administrative rules for the State of Montana do not allow division of parcels less than one acre on individual wells and individual drainfields. He could not figure out how this land could be further divided without coming before the Board of County Commissioners as a subdivision. In regard to a land management plan, the Reed's are very good stewards of the land. There is very little knapweed in the pasture and the slopes are all native timber with huge Ponderosa pine and fir trees. There is some managed logging happening on the property right now, which is the owners prerogative, especially with the fire danger. The land has been managed very well in the past and there is nothing that precludes that management in the future. He sees no way the property could be further divided without infrastructure. The proposal is far better than the three tracts that were there before the boundary relocation, which could have installed switchback roads up over the hillside and homes where they don't belong. This subdivision does provide resource protection. If a road is installed, it should not be expected that the area will remain pristine. The road changed the pristine nature by its very presence. This subdivision puts the new homes next to the access route and protects what is pristine on the hillside.

Commissioner Curtiss asked if there was enough room on Lot 3 with what already exists, a road, a building, etc.

Nick Kaufman stated there is a small barn on the lot. He has walked the site and feels there is enough room to build a home. There is a small swale but no riparian vegetation on the site.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Article 3-2(1)(I) to allow for a reduced road width from 24 feet to 18 feet, based on the findings of fact in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners conditionally approve the variance request from Article 3-2(1)(I) to allow for a driveway grade in excess of 8%, based on the findings of fact in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Colleen Dowdall stated that Tim had prepared a memo that modified each condition slightly to allow for the phasing plan requested by the applicant. Some things will need to be done prior to the filing of Phase 1 and other prior to the filing of Phase 2. The problems that may be experienced by the emergency vehicles on the driveway during the winter will be covered by Condition 3.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Article 3-2(8)(A)(iv) requiring subdivisions on private roads to provide pedestrian connections, based on the findings of fact in the staff report. Commissioner Curtiss seconded the motion.

Commissioner Curtiss stated that the Board needs to be a stronger advocate for pedestrian access. These three lots cover about 700 feet along the road and the other two lots cover another 500 feet. On private roads like this, a way should be found to begin the process of installing pedestrian connections.

Commissioner Carey stated that he agreed with Commissioner Curtiss.

The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the Chief Joseph Addition, based on the findings of fact in the staff report and subject to the conditions on the May 26, 2004 memo from Tim Worley which address the phasing plan requested by the applicant. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

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**Chief Joseph Addition Conditions of Approval:**

1. The developer shall provide proof of legal access to the subdivision prior to final plat approval for Phase 1. *Subdivision Regulations Article 3-2(2)(D).*
2. The developer shall provide a road maintenance agreement for Sleeman Creek Road, including snow removal, between the lot owners of this subdivision, which shall be reviewed and approved by the County Attorney's Office prior to final plat approval for Phase 1. *Subdivision Regulations Article 5-3(T) and OPG recommendation.*
3. Plans for driveway improvements accessing Lot 4 shall be reviewed and approved by the Missoula Rural Fire District and shall address: excessive grade; providing unobstructed vertical clearance of 13 feet 6 inches and horizontal clearance of 20 feet; construction of a turnaround at the terminus of the driveway; and an engineered driveway surface to support the weight of emergency equipment in all seasons and weather conditions. If standards for access cannot be met but the driveway is approved by the Missoula Rural Fire District, a statement shall be included in the covenants and on the face of the plat that the access does not meet standards for access by emergency vehicles, the language to be reviewed and approved by the County Attorney's office. The required and approved improvements shall be completed prior to filing the final plat for Phase 2. *Subdivision Regulations Article 3-2(10)(E) and Missoula Rural Fire District recommendation.*
4. There shall be a provision in the development covenant that states the following: "All homes shall have address signs clearly visible from the street and must be visible in all light conditions and at all hours of the day. Address signs should clearly identify the property." *Subdivision Regulations Article 3-2(2)(G) and OPG recommendation.*
5. There shall be a provision in the development covenant advising the owners of lots within Chief Joseph Addition of the Health Department recommendation that all new construction incorporate passive radon mitigation systems. The language of the provision shall be subject to review and approval by OPG prior to final plat approval for Phase 1. *City-County Health Department recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 2:25 p.m.

Resolution No. 2004-077 – Following the Public Meeting, Chairman Evans signed Bond Resolution No. 2004-077, dated May 26, 2004 relating to Series 2004 Limited General Obligation Bonds in the amount of \$995,000 for the purpose of financing improvements to the ice skating facilities for youth hockey and other recreation purposes for the Missoula Area Youth Hockey Association at the Missoula County Fairgrounds.

**THURSDAY, MAY 27, 2004**

The Board of County Commissioners met in regular session; all three members were present. Commissioners Carey and Curtiss attended an Economic Forum held at St. Patrick Hospital all afternoon.

Claims List – Commissioners Carey and Evans signed the Claims List, dated May 26, 2004, with a grand total of \$26,560.48. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Evans signed the Claims List, dated May 27, 2004, with a grand total of \$14,848.91. The Claims List was returned to the Accounting Department.

Plat – The Commissioners signed the Plat for Anderhaus Estates, a two lot subdivision of Lot 45A, Dinsmore's Orchard Homes Addition No. 5, and Rush Addition, Lot 1A, located in the SE¼ of Section 24, T 13 N, R 20 W, PMM, Missoula County, a total area of 2 acres, with the owner of record being Amy Hauschild.

**ADMINISTRATIVE MEETING**

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

Letter – The Commissioners signed a letter to Doug and Karilynn Cochran-Roberts, Missoula, letting them know the outcome of the rezoning process for the Grove Street property. After the protest period (which resulted in a lack of necessary signatures on the protest petition), the BCC (on May 25, 2004) signed a resolution rezoning the property from "C-RR3" to "Grove Street Special District."

Resolution No. 2004-079 – The Commissioners signed Resolution No. 2004-079, dated May 27, 2004, a Budget Amendment for the Partnership Health Center reflecting \$5,337 in funds from the Susan Komen Foundation expended for Outreach (Breast and Cervical Health) at the Arlee Pow Wow. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Amendment – Chairman Evans signed Amendment Number One, dated May 26, 2004 to Contract No. 04-07-521-020-0 between the Montana Department of Public Health and Human Services and the Missoula City-County Health Department (dated October 30, 2003), increasing the funds for the WIC office in the amount of \$33,266 for Caseload Maintenance and \$2,271 for State Sponsored Travel money. All other terms and conditions are unchanged or set forth therein. The document was returned to the Health Department for further signatures and handling.

Lease Agreement – Acting Chairman Commissioner Carey signed Lease No. 825-5.04-0010, dated May 27, 2004 between Plum Creek Timberlands, L.P., a Delaware limited partnership, and Missoula County Department of Emergency Services for the lease of approximately one acre of land for the new Pierce Lake Communications site on the summit between Seeley Lake and Condon. The payment for this lease is \$1,000 for the first five years, and then \$500 per year after that. The total amount of the development of this new site will be approximately \$129,000. All other terms and conditions are set forth therein. The document was returned to Jane Ellis in Emergency Services for further signatures and handling.

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Jed Dewey to determine the establishment and population levels of insect releases make on spotted knapweed and leafy splurge. This project is a joint effort that includes the Forest Services, Bureau of Land Management, City of Missoula, University of Montana, and the Missoula Weed Control District. The total amount shall not exceed \$8,500.00. The term will be June 1, 2004 through November 30, 2004. All other terms and conditions are set forth therein.

Extension Request – The Commissioners approved and signed a letter, dated May 27, 2004 to Ron Ewart, Eli & Associates, Inc., approving his request for a one-year extension of the final plat approval deadline for the Kellie Acres Summary Subdivision. The new deadline will be May 28, 2005.

Extension Request – The Commissioners approved and signed a letter, dated May 27, 2004 to Ron Ewart, Eli & Associates, Inc., approving his request for a one-year extension of the final plat approval deadline for the Braach Acres Summary Subdivision. The new deadline will be June 11, 2005.

Other items included:

- 1) The Commissioners approved a motion for CAO Ann Mary Dussault to submit an enhancement request for the Bicentennial Commission (which was appointed a couple of years ago).
- 2) The Commissioners discussed an application for Industrial Development Revenue Bond Financing for the Rocky Mountain Elk Foundation ("RMEF"). Info provided by RMEF was sufficient for the BCC to approve a motion to direct staff to move forward to notice and hold a public hearing on this issue.

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

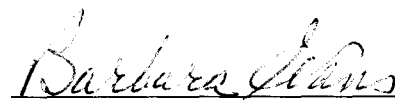
**FRIDAY, MAY 28, 2004**

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

Claims List – The Commissioners signed the Claims List, dated May 27, 2004, with a grand total of \$1,676.52. The Claims List was returned to the Accounting Department.

Plat and Agreement – The Commissioners signed the Plat and Subdivision Improvements Agreement and Guarantee for Butler Creek Development Park, a light industrial subdivision located in the SW¼ of Section 26, T 14 N, R 20 W, PMM, Missoula County, a total area of 19.79 acres, with the owners of record being George A. and Dianne M. Grutsch. The Improvements Agreement relates to water, sewer, street and drainage issues. Said improvements shall be completed no later than April 26, 2006. The estimated costs are \$544,203.90, and have been guaranteed by a Letter of Credit from Community Bank-Missoula, Inc.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, MAY 31, 2004**

The Courthouse was closed for the Memorial Day Observed Holiday.

**TUESDAY, JUNE 1, 2004**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Curtiss was on vacation from June 1<sup>st</sup> through June 4<sup>th</sup>. In the evening, Commissioner Evans attended a Special Meeting of the County Park Board held at the City Council Conference Room.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending May 31, 2004.

**ADMINISTRATIVE MEETING**

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

Agreement – The Commissioners signed one (1) Sanitary Sewer Grant Program Agreement for Partial Assistance to Owner-Occupied Households Secured by Real Property, dated May 21, 2004 with Lela Beagley, 545 Speedway Avenue, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. All sewer development fees and on-site connection costs and fees are as set forth therein.

Contract Amendment – The Commissioners signed an amendment to the Professional Services Contract between Missoula County and D Lower Construction, Inc. for the records management area at the Partnership Health Center. This area was remodeled to accommodate additional files. Additional phones and data drops need to be added to the area (\$816) and carpet to be purchased shall match the existing carpet (\$823), for a total amount of \$1,639.00. The term will be June 1, 2004 through June 15, 2004. All other terms and conditions are set forth therein.

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

**WEDNESDAY, JUNE 2, 2004**

The Board of County Commissioners met in regular session; a quorum of members was present. In the evening, the Commissioners and County staff members conducted a Public Discussion meeting regarding the proposed Code Enforcement Program for Missoula County; the meeting was held in the large courtroom in the Courthouse.

Claims List – Commissioners Carey and Evans signed the Claims List, dated May 28, 2004, with a grand total of \$8,835.89. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Evans signed the Claims List, dated June 1, 2004, with a grand total of \$134,749.58. The Claims List was returned to the Accounting Department.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending May 31, 2004.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Shirley E. Faust, for the month ending May 31, 2004.

**CHIEF ADMINISTRATIVE OFFICER MEETING**

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

Notice of Hearing – The Commissioners approved and signed a Notice of Public Hearing regarding the issuance of Revenue bonds to finance a headquarters facility for the Rocky Mountain Elk Foundation, Inc. The hearing will be held at the Commissioners' regularly scheduled weekly public meeting on Wednesday, June 23, 2004 at 1:30 pm in Room 201 of the Missoula County Courthouse Annex.

Agreement – Chairman Evans signed a Memorandum of Agreement, dated May 25, 2004 between the Missoula County Park Board (the "Board") and the Bonner School District #14 for assistance with park development. The Board agrees to provide up to \$3,000 in matching funds from the Capital Matching Fund Program (Spring FY04), and must be spent by May 30, 2006. The document was returned to Lisa Moisey, County Parks Coordinator, for further signatures and handling.

**PUBLIC MEETING – June 2, 2004**

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

**Pledge of Allegiance****Public Comment**

None

**Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$216,619.61. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

**Bid Award (Public Works): Van Buren Street Bridge Project**

BOOK 004 PAGE 041

Erik Dickson, Public Works Department, presented the staff report.

This is a request to award the bid for reconstruction work on the Van Buren Street Pedestrian Bridge. Bids were opened on May 24, 2004, with the five bidders responding as follows:

AAA Construction	\$445,528.00
D. Lower Construction	\$425,650.00
Bodell Construction	\$337,540.00
Frontier West	\$361,160.00
Edward T. Copps	\$447,876.70

The Engineer's estimate was \$379,610. It is the recommendation of the Public Works Department to award the bid to Bodell Construction Company as the lowest and best bid. Bodell Construction Company is experienced in the construction of major bridges. The company constructed the California Street cable-stayed pedestrian bridge, the Orange Street highway bridge over the Clark Fork River and the pedestrian bridge over the railroad tracks in north Missoula. The project is being funded with CTEP, MRA, City and County funds. County funds are currently programmed.

Commissioner Carey asked when construction would start on the project.

Erik Dickson stated that once the bid is awarded, the contractor will secure their bond, the contract will be signed and the work could start within two weeks.

Chairman Evans stated that the news report indicated the work would be done by football season.

Erik Dickson stated that Bodell is aware of the time constraints and agreed they would be able to complete the project by then.

Commissioner Carey moved that the Board of County Commissioners approve awarding the bid for reconstruction work on the Van Buren Street Pedestrian Bridge to Bodell Construction in the amount of \$337,540.00 as the lowest and best bid. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

**Bid Award (Clerk and Records): Property Title Searches**

Debbe Merseal, Clerk and Records Office, presented the staff report.

This is a request to award a bid for property title searches. Bids were let for property title searches with 3 title companies responding as follows:

Homestead Title	\$225.00	\$150.00
		\$50.00
Stewart Title	\$95.00	\$70.00
		\$35.00
Insured Titles	\$75.00	\$65.00
		\$50.00

Insured Titles has done property tax deed searches for the County in prior years so they are experienced with the process. Their bid is \$75 per parcel and there are currently approximately 65 parcels to be searched. It is the recommendation of the Clerk and Records Office that the bid be awarded to Insured Titles as the apparent low bidder. The budget implication is approximately \$4,200 per year.

Commissioner Carey moved that the Board of County Commissioners approve awarding the bid for Property Title Searches to Insured Titles in the amount of \$75 per search, as the lowest and best bid. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

**Hearing (Certificate of Survey): Stratton 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 55-B of COS 4865, located in the southeast one-quarter of Section 17, Township 14 North, Range 20 West.

Richard D. Stratton has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 10.80 acres in size located near Missoula, Montana. Richard proposes to create one approximately five acre parcel for transfer to his wife, Shelly Carol Stratton, for residential purposes and keep the remaining approximately 5.80 acre parcel for residential purposes as well.

The history of the parcel is as follows: In 1996, Edward W. Bouma entered into a written agreement for the sale of Tracts 55 and 57 of COS 1925, to Adam V. and Helen A. Holzer. Adam and Helen filed COS 4865 in October, 1998, with the intent to qualify for the family transfer exemption. Tract 55-B was transferred to Darla J. Bartholomew, their daughter. Darla filed a quitclaim deed in November, 1998, deeding Tract 55-B to Daryl M. Holzer. In August, 2003, an agreement was entered into by Daryl Holzer to sell the tract of land to Richard D. Stratton.

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



Chairman Evans opened the public hearing.

Gilbert Larson, Professional Consultants, Inc., stated he was representing Rick Stratton on this family transfer. He or Mr. Stratton would be available to answer any questions.

Colleen Dowdall stated Mr. Stratton purchased the parcel in 2003.

Rick Stratton stated that was correct.

Colleen Dowdall asked if Mr. Stratton was residing on the property now.

Rick Stratton stated he was not residing on the property.

Colleen Dowdall asked if there were any structures on the parcel at this time.

Rick Stratton stated there were not.

Colleen Dowdall asked if it was his intent to divide the parcel when he purchased it.

Rick Stratton stated that was his intent.

Colleen Dowdall asked what the purpose was of dividing the parcel and transferring it to his wife.

Rick Stratton stated that they will immediately sell one parcel and they are considering building their home on the other parcel.

Colleen Dowdall asked if the parcel to be sold is something he and his wife are doing together.

Rick Stratton stated that he is married to Shelly, so of course it is something they are doing together.

Colleen Dowdall stated they would share the proceeds of the sale.

Rick Stratton stated that was correct.

Colleen Dowdall asked if Mr. Stratton has discussed subdivision review with anyone or visited the Office of Planning and Grants to discuss subdivision review on this parcel.

Rick Stratton stated he had not.

Chairman Evans asked if anyone had explained the purpose of his presence at this meeting.

Rick Stratton stated he had a little, brief explanation.

Chairman Evans stated the law gives the Commissioners the responsibility to determine whether divisions of land are being done in an attempt to evade the subdivision act. The law gives certain allowances to families. A parcel may be given to a family member, once in each county, per lifetime. The Board has to decide if the request to split this land is based on a real intent to give it to the recipient for their singular use and financial gain or whether it is an attempt to evade the subdivision act. It appears that this is an attempt to evade the subdivision act so the parcel can be sold.

Rick Stratton asked why the Commissioners felt this was an attempt to evade the subdivision act.

Chairman Evans stated that he just told the Board he plans to sell the land.

Rick Stratton stated that it was correct that he planned to sell one of the lots.

Commissioner Carey stated that is subdividing land.

Gilbert Larson stated that within the law there is the allowance to sell or transfer to a spouse, which complicates it more than giving a piece of land to a child. It is a little different, but the intent here is that they are not financially able to build a home. His wife is not able to benefit unless they are able to create this tract of ground. She will benefit by having this tract of land and being able to sell it, and then they can build a home on the remainder. He could not think of any other mechanism, why that was set up in State law to allow a transfer of ground to a spouse other than to allow, in this case, her to build a home on the remainder. He recognized it was a little different than when children are being dealt with, but it is allowed within the law. As Rick has explained, they are married, there is a sharing of joint interest. Their interest here is to be able to build a home and she will benefit by having a place to live.

Commissioner Carey stated that the question was should they go through subdivision review.

Gilbert Larson stated the State law was developed so that exactly what they are doing is the intent of the law, that she will benefit from this sale. That is why that exclusion was left in the law, to do exactly what Rick is doing. There have been no other subdivisions on Fire Bucket Loop. That area has been created through Certificates of Survey. It makes more sense that the pattern be continued. It is compatible with what has been done on the adjoining tracts. This is not creating tracts that are out of harmony with what exists, which have also been created through family transfers.

Commissioner Carey stated there would still be a benefit if it went through subdivision review.

Chairman Evans stated that the law does allow a man to give a parcel to his wife, one transfer to her per lifetime, per county.

Colleen Dowdall stated that is correct, if it is not an attempt to evade subdivision review. The information the Board may consider is what the intent of the applicant is in transferring the property, sometimes it may be part of an estate planning process.

Commissioner Carey stated that is what the Board usually sees when this is a transfer to a spouse.

Chairman Evans stated that the law does allow this and she does not have a crystal ball, she cannot read this man's mind. She would support a motion to grant this request.

Chairman Evans moved that the Board of County Commissioners approve the request by Richard D. Stratton to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review.

Commissioner Carey stated he was uncomfortable in seconding the motion because it is a matter for subdivision review as that is what is happening. Almost every week, the Board considers requests for family transfers. He could not recall one where it was such a straight forward attempt to have a subdivision. Usually they are part of an estate planning process or to children to be held in a trust. He felt that was more the intention of the law, to benefit families, rather than offering a way around the subdivision process.

Mike Sehestedt stated it comes down to a question of facts. For the Commissioners to resolve, there are facts that would support either outcome. Given the apparent deadlock, since the motion has not been seconded, the Commissioners might consider a substitute motion to continue this for a week when all three Commissioners are present. Otherwise, with no action it would fail and be denied.

Commissioner Carey offered a substitute motion that action on the Stratton Family Transfer be postponed for one week.

Gilbert Larson stated that he looks at the intent of the State law between a husband and wife. What is presented today is a little more honesty than what the Board is used to with even some transfers to children. It is known that many of those parcels end up sold, but it has to be for the benefit of the child or other individual. In this case, the Board has been told exactly what will happen, that is the only way they can benefit and build their home on the remainder. As he looks at the law and that a transfer is allowed between a husband and wife, he tried to picture what other type of occurrence could happen. He doubted there would be an occurrence of a husband and wife building separate residences. It is allowed and this seems to be a clear case of how this will benefit her.

Chairman Evans stated that under subdivision review, infrastructure, roads, sidewalks, etc. are looked at. Are those things already in place at this location.

Gilbert Larson stated they are not in place. That is part of the reason they are using the COS process. The road is a gravel road, there are not amenities that would normally be seen in a subdivision. Fire Bucket Loop is a gravel road. There are not parks or other features that would normally be in a subdivision. There are many lots in this area that have all been developed through this COS process; that is why it is difficult to deal with just one site. Rick is not a developer, he is not in the business of creating lots. This was the mechanism recommended for him to accomplish his goals with his wife.

Commissioner Carey stated he was still not persuaded there is no benefit if they go through subdivision. There is still a benefit, there will be a divided lot. He is concerned that if family transfers are continued to be treated in this way, soon there will be, in fact, a fairly major subdivision without any review at all, because husbands and wives will divide tracts and build houses, that could happen countless times.

Gilbert Larson stated that has already happened.

Commissioner Carey stated that it was not wise to continue that, as Gilbert mentioned, it is not up to standards. It would have been, had many of these gone through proper subdivision review.

Gilbert Larson stated that pattern is already continuing in this area, there have been recent transfers, perhaps to children, that have been done on neighboring tracts. The only thing unique in this case is that Rick has been more forthright about their goal to build to a house.

Chairman Evans stated she could not fault Mr. Stratton for that. She asked counsel what would happen if the motion to postpone was not seconded.

Mike Sehestedt stated it would be a case of no action and because use of this exemption requires Commission approval, it would be deemed denied. When land is divided by family transfer, there is an increase in value. He could not remember a case when use of the exemption was approved when the sole stated purpose was to create value for the community as opposed to estate planning purposes, a common use of the exemption to a spouse. It could also be to the parent of the spouse. The straight out purpose is to create a fund for the common good. That seems to push the envelope on what the Commissioners have previously approved.

Chairman Evans stated that this is certainly not the first requested transfer of property in this area and she could not see punishing Mr. Stratton for being honest or that building a house for he and his wife is not an admirable goal. She is willing to approve the transfer.

Commissioner Carey stated his motion was still on the floor to postpone the decision on the matter for a week.

Rick Stratton stated he was not an expert in these matters. He told the truth and maybe that was something he shouldn't have done. Maybe he should have said both the lots would sit there and not be sold. Moving here four years ago, they thought they would live well, but the median household income here compared to property values is ridiculous. Consulting with Gilbert, this was a way, within the law, to sell a lot and then build a house on the remainder. Just next

door, someone else did the same thing through a family transfer. What that person said when addressing the Commissioners may have been totally different than what he said. He was told that what he is asking falls within the scope of the law.

Commissioner Carey stated they rely on people to tell the truth. One of the reasons this is put on the record is that if it is learned that someone turned around and sold the property to avoid subdivision review, there would be some legal recourse to address the situation. Subdivision regulations came about over time for some very good reasons. If everyone does their own thing, it doesn't work out over all, so it was an effort to bring some order to the process of subdividing. He is glad Mr. Stratton told the truth and he could get the subdivision approved, but he would need to go through that process. This is not the proper mechanism for dividing his land.

Chairman Evans stated she had a problem with the expense and amount of time involved to do a small two lot subdivision.

Colleen Dowdall stated that the County Attorney's Office is looking at many of the family transfer divisions that have occurred over the last year to see if there were subsequent transfers and to pursue whatever remedies they can under the law for any violations. Telling the truth is the right thing to do. Had Mr. Stratton not told the truth and he subsequently sold the land, there could have been legal repercussion later. There is more and more evidence that this process is out of control in Missoula County and something must be done.

Chairman Evans seconded the motion to postpone action on the request for one week. The motion carried on a vote of 2-0.

#### **Hearing: Intent to Create RSID 8484 – Paving of Spring Hill Road**

Jesse Sattley, RSID Coordinator, Public Works Department, presented the staff report.

This is a request to create RSID 8484 – Paving of Spring Hill Road, replacement of a creek crossing culvert, installation of a school bus turnout and signage, located in Missoula County, Montana.

The original RSID 8472 was created last year, however the construction bids were too high. The new RSID 8484 reflects some change in costs and scope of work. The Montana Department of Fish, Wildlife and Parks will now contribute \$40,000 toward the culvert replacement since it will be a fish-sensitive crossing and requires some specialized, expensive construction. The new district has an estimated cost of \$168,000. The residents estimated share, based on equal assessments, is \$4,541.00 over a period of 20 years. There were no letters of protest. Paul Druyvestein of Druyvestein, Johnson and Anderson, P.C. is the district engineer. Staff recommends creation of RSID 8484.

Chairman Evans opened the public hearing.

Lynette Sims stated they have been working on this project for several years. The culvert was damaged and she was excited that all the residents have stuck together. They really want to see this project done. It is necessary to have the culvert replaced, it is the only access to the homes. The school bus turnout is also very important for the safety of the children. Right now, the children are let off at the corner of Spring Hill and Mill Creek where logging trucks go by. The mail boxes are in the same location. Fish, Wildlife and Parks has put in a lot of effort to help get funding for the culvert replacement. She also noted for the record that Sonny Rockwell, owner of Tract 41-A, is in favor of the proposal.

Robert Hendricks stated he strongly supported the creation of the RSID. He reiterated the concern for safety at the bus stop. It was not unusual for five or six cars to be parked there waiting for children, it is congested and visibility is limited.

Kim Hendricks stated she was also in support of the RSID.

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

Commissioner Carey moved that the Board of County Commissioners create RSID 8484 for paving of Spring Hill Road, replacement of the creek crossing culvert, installation of a school bus turnout and signage. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

#### **Consideration: Roske Addition (2 lots on 3.45 acres) – U.S. Highway 10 East in Clinton**

Liz Mullins, Office of Planning and Grants, presented the staff report.

Ruby Roske, represented by Brenda Rankin of Territorial Engineering, is requesting approval of the Roske Addition, a 2 lot subdivision. Lot 1 is proposed to be 1.33 acres in size and Lot 2 is proposed to be 2.12 acres in size. The property is accessed off of U.S. Highway 10 East, located in Clinton.

The property is unzoned. The 2002 Missoula County Regional Land Use Guide designates the property as Residential, 2 dwelling units per acre. A significant portion of Lot 1 has slopes greater than 25% where a No Build Zone has been proposed.

A 20 foot private driveway access easement is proposed along the northwestern boundary of proposed Lot 2 for the benefit of Lots 1 and 2. A shared driveway maintenance agreement is a condition of approval. The 20 foot private access easement is proposed within the 25 foot landscaped buffer area of the Primary Travel Corridor. Originally, staff recommended that the private access easement be moved outside the 25 feet of the Primary Travel Corridor landscaped buffer along the Highway 10 East frontage. However, at Planning Status, it was decided that the landscaping could still be within the 25 feet and the driveway easement could remain in the proposed location. If the driveway easement is not relocated as required by Condition 1, then a revised landscaping plan required by Condition 9 is not necessary. In response to the Planning Status meeting, the Commissioners would need to make a motion to delete Conditions 1 and 9. The submittal includes a proposed development covenant for compliance with Primary Travel Corridor landscaping within the 25 feet and setback standards.

There is one variance being requested, from Article 3-3(1)(D)(iii) to not require Lot 1 to abut on and have access to a public or private street or road. OPG recommends approval of the variance request. The proposal is for one lot fronting on U.S. Highway 10 East and a second lot behind the first, accessed by a 20 foot driveway easement. The Public Works Department did not object to the variance request. The Missoula Rural Fire District is satisfied with the proposed access and will review driveway plans, which is a recommended condition. There is an RSID/SID waiver statement on the plat for improvements to U.S. Highway 10 East.

There is a condition for a revegetation plan. An e-mail from Bill Otten, Weed District, states that a revegetation plan is no longer required because the driveway disturbance will not occur until after Lot 1 is purchased. Mr. Otten stated that the condition addressing noxious weed control and revegetation is sufficient. Therefore, Condition 7 could also be deleted.

Chairman Evans asked for public comments.

Brenda Rankin, Territorial Engineering, developer's representative, stated she had no additional comments. The conditions as amended after the Planning Status meeting are acceptable to the applicant; to delete Conditions 1, 7 and 9.

There were no further public comments.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Article 3-3(1)(D)(iii) of the Missoula County Subdivision Regulations that requires each lot to abut on and have access to a public or private street or road, based on the findings of fact set forth in the staff report. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey moved that the Board of County Commissioners delete Conditions 1, 7 and 9 contained in the staff report. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey moved that the Board of County Commissioners approve the Roske Addition Subdivision, based on the findings of fact set forth in the staff report and subject to the conditions contained in the staff report as amended. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

#### **Roske Addition Subdivision Conditions of Approval:**

##### **Driveway**

1. Final plans for the driveway design shall be subject to review and approval by the Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-2(10)(E) and Missoula Rural Fire District recommendation.*
2. The Development Agreement shall include a provision requiring a 20 foot horizontal clearance and 13 foot 6 inch vertical clearance for the entire length of the driveway, subject to review and approval by the Missoula Rural Fire District. *Subdivision Regulations Article 3-2(10)(E) and OPG recommendation.*
3. A Driveway Maintenance Agreement shall be reviewed and approved by the County Attorney's Office prior to final plat approval and be filed with the final plat. *Subdivision Regulations Article 3-2(1)(I)(iii) and OPG recommendation.*

##### **Fire**

4. Final plans for a water supply for fire protection purposes shall be reviewed and approved by the Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-7(1) and Missoula Rural Fire District recommendation.*
5. All residences within this subdivision shall post address signs visible from Highway 10 East. Address plans shall be reviewed and approved by the Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-1(b) and Missoula Rural Fire District recommendation.*

##### **Weeds**

6. The Development Covenant shall include a provision stating that lot owners are required to revegetate any ground disturbance caused by construction or maintenance with beneficial species after construction or maintenance is completed, subject to review and approval by the Weed District. *Subdivision Regulations Article 3-1(2) and Weed District recommendation.*

##### **Health**

7. The Development Covenant shall include a provision advising property owners of the Health Department recommendation that all new construction incorporate passive radon mitigation systems. The language of the provision shall be subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-1(2) and City-County Health Department recommendation.*

##### **Wildlife**

8. The Development Covenant shall be amended to include the following:
  - Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, bears, mountain lions, wolves, skunks and raccoons. Contact the Montana Fish, Wildlife and Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife."
  - There is the potential for vegetation damage by wildlife, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be aware of this potential damage.

They should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Homeowners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.

- Do not feed wildlife or offer supplements (such as salt blocks), attractants or bait for deer or other wildlife. Feeding wildlife results in unnatural concentration of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against State law (MCA 87-3-130) to provide supplemental feed attractants if it results in a "concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners should be aware that deer might occasionally attract mountain lions to the area.
- Birdseed is an attractant to bears. Consider not using birdfeeders in this area between the months of April through October. If used, bird feeders must: a) be suspended a minimum of 20 feet above ground level; b) be at least 4 feet from any support poles or points; and c) should be designed with a catch plat located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- Garbage must be stored in secure bear-resistant containers or indoors to avoid attracting animals such as bears, raccoons, dogs, etc. It is best not to set garbage cans out until the morning of garbage pickup.
- Pets should be confined to the house, in a fenced yard or in an outdoor kennel area and not be allowed to roam, as they can chase and kill big game and small birds and mammals. Under current State law, it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124).
- Pet food and livestock feed must be stored indoors, in a closed shed or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, etc. When feeding pets or livestock, do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
- Barbecue grills should be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on the grill, lid, etc., can attract bears and other wildlife.
- Gardens and fruit trees can attract wildlife such as deer and bears. Keep the produce and fruit picked and off the ground, because rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
- Compost piles can attract skunks and bears and should be avoided in this subdivision. If used, they should be kept indoors or built to be wildlife-resistant.

The revised language shall be reviewed and approved by OPG prior to final plat approval. *Subdivision Regulations Article 4-1(12) and Fish, Wildlife and Parks recommendation.*

**Hearing: Petition Lolo Creek Trails (94 lots on 56.5 acres) – Highway 12, one mile west of Lolo**

Monte Sipe, Office of Planning and Grants, presented the staff report.

This is a request from Mustang Holdings, represented by Ray DiPasquale from Professional Consultants, Inc., to divide a 56.5 acre parcel into 94 lots for residential development. The property is located on the north side of U.S. Highway 12, approximately 1 mile west of Lolo.

Staff is recommending approval of the Lolo Creek Trails Subdivision Phases I and II Preliminary Plat with 15 conditions. The Missoula Consolidated Planning Board conducted a public hearing on this request on May 18, 2004 and voted 4 "aye," 4 "nay" with 1 passing on a motion to recommend approval of the subdivision. The motion failed due to the lack of a majority vote so the subdivision comes to the Board of County Commissioners without a Planning Board recommendation. Prior to the vote on the subdivision, the Planning Board had recommended amendments to the conditions of approval. Both staff and Planning Board recommended conditions will be addressed in the presentation.

The property is unzoned and the 2002 Lolo Regional Plan designates the 56.5 acre parcel proposed for development as "Residential," with a recommended maximum density of 6 dwelling units per acre for the land below the steep slope and "Open and Resource" for the balance of the property located on steep hillsides/Common Area A. The gross residential density for 94 lots on 56.5 acres is 1.7 dwelling units per acre. Excluding the 12.5 acre steep hillside area, the residential density for the project is 2.1 dwelling units per acre. The proposed lots average .22 acres in size, to be developed in two phases. Phase I would include 52 lots and a majority of the infrastructure and Phase II includes the remaining 42 lots on the lower bench closest to the highway.

The proposed access is from Highway 12 via three public roadways: Stella Blue Drive Loop, Cassidy Trail and Sugaree Trail. An estimated 768 additional trips per day will be generated by this subdivision, based on 94 new homes at approximately 8 trips per day and 94 trips per hour during peak AM and PM hours. Highway 12 is under Montana Department of Transportation jurisdiction and approach permits from that agency will be required. The MDT agency comment letter states that if the volume of vehicles is over 150 vehicles per hour, then the approach permit will go through MDT systems impact review. The applicant has proposed right hand "slip lanes" at both approaches into the subdivision. All interior roads are designed with 32 foot pavement width with curb and gutter. The applicant has proposed two future road connections, one to the east between Lots 38-39 and one to the west between Lots 10-11. The Planning Board recommended that two additional connections be installed to the west; one in the approximate location of Lot 16 and another in the location where Lot 4 is proposed. As a result of this recommendation, Lot 16 will be deleted and Lot 4 would be relocated to the northwest behind Lot 5. The application packet states all units will have a minimum of two paved off-street parking spaces and double car garages. Staff is recommending a condition to require two paved off-street parking spaces in the covenants.

The applicant is proposing 5 foot wide concrete sidewalks with 7 foot wide landscaped boulevards on both sides of all internal streets. In addition, the applicant is proposing an 8 foot wide bike/pedestrian path for the entire east/west width of the subdivision, located behind the Primary Travel Corridor in a 10 foot non-motorized access easement. Planning Board recommended that the developer initiate an RSID for pedestrian/bicycle improvements on the north side of Highway 12 from the project site to Highway 93 South.

Highway 12 is designated as a Primary Travel Corridor by the Subdivision Regulations. The applicant has submitted a proposal that includes a landscape plan, a 50 foot building setback line from Highway 12 and one sign providing the name of the subdivision. Staff is recommending a condition requiring the proposed landscape planting and a system for seasonal watering to be installed and amending the covenants to require ongoing maintenance and watering of the Primary Travel Corridor landscaping. Planning Board has recommended that the following lots be combined: Lot 1 with Lot 2, Lot 93 with Lot 94, Lot 42 with Lot 43, and Lot 40 with Lot 41; that the covenants be modified to require development of the combined lots toward (facing) Highway 12; and that the garages be placed on the side or rear of the houses.

The proposed subdivision is within the RSID 901 Lolo Water and Sewer District. The applicant proposes connection to the district water and sewer with main line extensions to the subdivision.

The subdivision regulations require land or cash equal to 11% of the net area of land proposed to be divided into lots one-half acre or smaller. This equates to 2.3 acres required for dedication. The applicant has proposed 27.5 acres within 6 common areas for this subdivision. The homeowners covenants require provisions for maintenance of the common areas and a mechanism for assessments for the associated costs. Three locations within the common areas are designed with detention basins for storm water. Planning Board recommended that all detention areas that are identified in the common areas are no steeper than 8:1 slopes going down into them.

Students residing in this subdivision will attend Lolo Elementary School for K-8 and Big Sky High School. The development has the potential to add 141 new students to the district, based on the estimate of 1.5 students per household. Lolo Elementary School is approximately 1.5 miles away. Big Sky High School is approximately 11 miles away. School bus service along Highway 12 is available for children attending Big Sky High School, but not Lolo Elementary School, because it is within a 3 mile distance to the school. Lolo Elementary School will provide bus service to children with special needs if requested. Staff was recommending a condition that a bus pullout be installed at a location that is acceptable to County Public Works and the appropriate school district. After contacting the school district, it was discovered that a private entity contracts with Big Sky High School for busing. Staff and Planning Board are recommending that the condition be modified to include the provider of bus service to the Missoula County High School District as an additional agency for review of the bus pullout location and design.

The Missoula Rural Fire District will serve the subdivision and a station is located approximately 1.5 miles from the property. The applicant has proposed connection to the 901 water system with water mains and fire hydrants throughout the subdivision. Curt Belts, Missoula Rural Fire District, recommended house addresses be clearly visible from the street and well illuminated or of reflective materials. Staff has recommended that the address sign provisions be included in the covenants.

The topography of the site varies from very steep hillsides on the northern portions of the property, a narrow ridge running through the middle of the property with 25%+ slope and two large meadows which are relatively flat and vegetated with grasses. Staff is recommending a condition to designate all 25%+ slopes as No Build Zones, which includes a large majority of Common Area A and the ridge running through the middle of the property.

The property is not within an irrigation district. The developer states that an abandoned drainage ditch previously flowed in an easterly direction and flowed into property directly to the east, where the ditch terminates. The developer represents that the property to the east no longer holds water rights to the ditch so it will not be maintained for irrigation purposes and will be abandoned during development. The developer asserts that there is not a recorded easement for the ditch, but has not provided proof of that. Marge Zaveta, owner of the property to the east, is reported to have claimed a water right from this ditch for stock water and for Lolo Creek irrigation. However, the status of her claim is not certain and the applicant could not provide evidence of the status of her claim prior to this report. Staff is recommending a condition that the applicant provide a 20 foot easement for the ditch in the absence of evidence that no one has a water right in the ditch. Additionally, staff is recommending a condition that provides for the removal of water rights from the property and notifying prospective buyers of the intent to remove the water rights and document that intent, if not providing documentation that the water rights have already been removed.

Montana Fish, Wildlife and Parks identified the site as white tail deer and elk winter range, noting that due to nearby development, the flat portions of the site is no longer valuable wildlife habitat. The hillside provides cover and forage for deer, elk and many other species. In order to reduce the risk of conflict, Montana FWP recommended several modifications to the covenants. Staff has recommended these as conditions and the developer has agreed to the recommended amendments. Planning Board recommended a condition that the covenants are modified to specify that Common Area A will be closed to human activity and uses during the time period that this area is used by wintering wildlife. The time frame is to be defined by OPG after consultation with Fish, Wildlife and Parks.

Two riparian areas have been designated on the plat and labeled as 50 foot buffers and Areas of Riparian Resource – No Improvements Zones. Staff is recommending a condition that the Riparian Resource Management Plan and the Riparian Plan Map be referenced in the covenants and attached as an exhibit.

Philip Maechling, Historic Preservation Officer, recommended that the developer keep a good visual buffer between Highway 12 and the houses and design the subdivision so that houses are not developed on the hillside and intrude into the view from the road and perhaps from the northerly entrance to Traveler's Rest State Park. The subdivision is close to the Traveler's Rest State Park and the Historic Preservation Commission expressed concerns that the houses be set back from Highway 12 and about buildings on the hillside being visible from the north entrance to the park. Compliance with the Primary Travel Corridor standards should protect the view from the highway and from Traveler's Rest. Hillside on slopes greater than 25% are No Build Zones, in compliance with the hillside regulations and will prevent disturbance of the hillside view. Planning Board requested that OPG endeavor to gather additional information pertaining to the historic

significance of the potential trails consulting with other technical agencies and working with the applicant to provide information to the Board of County Commissioners for today's hearing.

Suzanne Julin, Historic Preservation Office, conducted additional background research and attended a project site visit to address this request. The purpose was to investigate the possibility of significant historic and cultural resources on the property, particularly resources associated with the "Lolo Trail." Milo McLeod, U.S. Forest Service archaeologist, and Dan Hall, archaeologist with Western Cultural, Inc., were present at the site visit. Mr. McLeod explained that the historic maps of this particular vicinity show the trail north of the creek and at the bottom of the slope. The travel route was likely on the upper bench along the foot of the slope to the point further west where the valley narrows and the trail proceeds up the ridges. Mr. McLeod pointed out that the Lolo Trail was well used and well known long before Lewis and Clark traveled the route. However, in this area, its physical presence has evolved, been covered up by other uses or other roads, or disappeared to a point that physical remnants of the trail are more difficult to identify than at some other points along the way. Mr. Hall pointed out that historic trails are often overlaid by other trails or roads and that existence of the original tread is often hard to determine absolutely. Mr. McLeod and Mr. Hall were in agreement that historic evidence and topographic features definitely indicate that the trail traversed this land. Although traces of roads and routes appear in several locations on the property, they could not identify specific tangible resources with any degree of certainty during this cursory tour.

Staff recommended additional conditions based on the historic research, one, that the developer provide a cultural resource survey conducted by qualified professionals and infrared remote sensing of the entire site and provide definitive information about significant resources or the lack thereof, based on Subdivision Regulations Article 3-1(9) and the Historic Preservation Office recommendation. Second, if significant resources are identified, the developer shall dedicate a 20 foot non-motorized public access easement to a qualified entity of the State or Federal government in the approximate location of the "Lolo Trail." Significance of the trail and recognition of the various groups that used it historically should be interpreted through installation of signage. This condition is subject to review and approval by OPG prior to final plat approval.

No variances are being requested. Several comment letters were received which are included in the staff report. Several additional comment letters were received after the staff report was prepared, including a letter from the Historic Preservation Commission, which are attached to the staff report. In addition, a letter was received from the applicant/developer Dennis Doran, in response to items addressed at the Planning Status meeting yesterday, including the Lolo Trail, lot orientation, access points and the irrigation ditch.

Ray DiPasquale: Ray DiPasquale with PCI, representing Mustang Holdings. I wanted to introduce the project by reiterating some of the comments that Monte made about the completely conforming nature of the subdivision and the fact that there are no variances requested, that the application meets or exceeds the development regulations and standards. I believe at the Planning Board meeting, Colleen Dowdall actually expressed, and this is taken out of the minutes from the meeting, "I would like to point out at this time that the subdivision has meet every subdivision standard, it required no variances which I have seen two other times in 10 years of doing this job. The other two were for subdivisions much smaller than this, for minor subdivision, so this Board has never seen a subdivision in 10 years without a variance required because they are doing all the pedestrian improvements on the site that are required." In addition, Mike Kopitzke also noted that "the Lolo Plan can't be everything to everybody and they do comply with the plan. They are putting in roads, sidewalks, landscaping and are doing everything that the subdivision regulations require. I mean, they are following the letter of the law and taking care of what needs to be done out there." Those are direct quotes from the Planning Board meeting. We also feel that the sanitary sewer and water service extensions to the property, those public extensions, are in compliance with the master facility plans of the RSID 901 Water and Sewer Board in the area. It is not the intent of this developer to create an RSID and it is not the intent of this developer to require contributions for these water and sewer service extensions from the adjacent neighbors. There are also quite a few conditions that were expressed in Monte review and we comply with the vast majority of them, however there are a couple of them that we would like to discuss and they quite frankly follow some of the comments that were made in Mr. Doran correspondence that came out of the PS meeting just yesterday. With respect to Conditions 8 and 9, the original OPG conditions, and I think that they are shown on the Request for Commission Action, Page 2. Conditions 8 and 9 surround the irrigation ditch and as Mr. Doran pointed out in his correspondence to the Commissioner, the actual issue with respect to the irrigation ditches has changed somewhat since Monte, I think, first wrote his report. It is our understanding that Marge Zaveta does have the water rights re-established for her property. The issue in question is the easement across the subject property and the prescriptive use of that easement that was never formalized in any way and what Mr. Doran is suggesting is that should evidence of that easement be brought to his attention, and it has not to date, that he would be willing to provide the irrigation water to that adjacent parcel to the east. And I think that's basically the crux of it, that the irrigation water will be provided to that adjacent neighbor should the easement be established. He feels that the onus the proof of that easement should be on the adjacent property owner to establish that that easement actually exists. That's my understanding of the irrigation condition. So, we would like Conditions 8 and 9 to be modified in that regard. All the other conditions that were originally stated in the OPG report we would comply with. With respect to the additional conditions mentioned at the Planning Board hearing, the first condition has actually been accomplished in terms of endeavoring to gather additional information, but item number 3 discusses two additional 60 foot wide public access and utility easements provided along the eastern edge of the property. We would agree that there would be a usefulness in adding a second 60 foot wide access and utility easement to the western property on the lower bench of the property. We already have one shown on the upper bench of the property and don't feel that a third connection to that property is actually necessary. So in terms of modifying our plan, we would shown two connections to the western property, maintain one connection to the eastern property, in order to provide connectivity to those parcels. So we would ask for a modification of Planning Board condition item 3. Similarly, a modification to item number 4 discusses the consolidation of several lots along the Highway 12 frontage of the property in order to orient the proposed structures towards the highway in that location. That orientation was suggested by one of the Planning Board members in order to provide a different type of façade along the highway. While we are completely compliant with the setback requirements and with the Primary Travel Corridor setbacks, including the landscaping issues and have indeed actually set the parcels further back than is necessary, we would agree to modify the lots that are furthest south on the project to allow for the orientation of the structures towards the highway, to face the highway. We don't believe that it's necessary to actually combine lots to do that, we have space and the ability to enlarge those parcels to create that façade treatment of four parcels, four lots along the Highway 12 frontage. That would be our request for the modification of Planning Board Condition 4. With respect to Planning Board



Condition 7, it discusses the initiation of an RSID for pedestrian and bicycle improvements along the north side of Highway 12. We believe that we have a possible solution to that issue and it also ties in directly with the last two new OPG conditions and those conditions are discussed on Page 6 of Mr. Sipe's report, the additional staff conditions, staff's additional recommended conditions. The discussion about the cultural resource survey, and you'll hear more about this I'm sure, suggests that the Lolo Trail went along the upper bench between the pink lines that are essentially shown on the exhibit to your left. Mr. Doran's correspondence to you, dated today, actually discusses that in some detail and he respects the fact that it's quite possible and probable that the trail did go through that area and we are intending to comply with actually item number 2 on the recommended conditions that suggest a 20 foot wide non-motorized public access easement be dedicated to a qualified entity of the State in the approximate location of the Lolo Trail and that we should also have an interpretive type center or signage in that area and I think we found a location that is very suitable for that purpose and we would extend the 20 foot wide access easement across the open space for the entirety of the property, from the eastern boundary to the western boundary, and in that way commemorate the trail in its approximate location. Should that trail connection be made to our adjoining property owner to the east, we feel that we could actually create a trail that would continue to the eastward direction, again, in the approximate location of the Lolo Trail and we could also tie that into some trail system that would eventually discharge out to the Holt property. The Holt property is directly opposite Traveler's Rest and the new driveway that's being installed on Highway 12 and that would provide a measure of access to get to the Traveler's Rest State Park, and it would keep that pedestrian access a public pedestrian access away from the highway. Absent that, we could tie that back into, if that's not acceptable to the Commissioners, then the developer would be receptive to the creation of an RSID for that sidewalk improvement as suggested by the Planning Board but we don't believe that it's necessary at this time, if we could make that trail system work. Those are the only modifications we have to the conditions that were presented by Mr. Sipe. We'd like to reiterate that the density issue that's going to be discussed in some more detail is really one-third of the recommended density assigned by the guidelines set up in the Comp Plan and the willingness of this developer to attend to the conditions that were addressed in Mr. Sipe's report.

Commissioner Carey: I have a quick question while you're there, Ray. There seems to be an old road cut into the base of the hillside running east and west behind your property and your neighbors and so on, is that the pathway that you're thinking about doing.

Ray DiPasquale: No, I think the roadway you're talking about is perhaps a cut slope that was created as a logging trail as was testified by Mr. Hendrickson both at the Public Hearing as well as at the site visit with some of the historians. We would see that path actually going further up the hill so that the view and the vista would be better and that it would provide some measure of security and safety for the neighbors in that area.

Chairman Evans opened the public hearing.

Elmer Palmer: Good afternoon, Commissioners. I'm Elmer Palmer. I speak first for myself and then secondly for the Lolo Community Council. For myself, I would like to address a situation that is occurring. You're now considering 94 lots on this subdivision. You just approved one up the hill, up the road just a little bit with 30 some on it. We have approved one over on the east side of Highway 93 with 37 lots on it, we have 64 lots coming to you in the form of the Allomont, we have coming to you in the form of Ponderosa Heights or something like that, 108 lots with a total of 123 dwellings on it. And yes, we sit here and we look at this situation with 94 lots, 8 trips per day, being some 700 and some odd trips for this subdivision. When we start adding all those together, we get a whole lot and nobody yet really knows what Ken Allen is doing with his property down there which is going to put more traffic onto the Highway 93. On the third day of November of last fall I had a doctor's appointment here in Missoula at 9:00 o'clock. I left home at quarter 'til eight, an hour and fifteen minutes, and I was not at my doctor's appointment at St. Pat's Hospital. The traffic on Highway 93 at times is backed up for the stop light at Wal-Mart, it's backed up well beyond the fitness center out there at Blue Mountain Road and that particular morning I stopped the first time for that light at Wal-Mart clear back at the Weigh Station on the opposite end of the valley. Traffic is, I understand, being studied, but we continually add these subdivisions, we add this traffic and no one is really coming up with an answer to the situation. We need to do something about the traffic before we start putting in a whole lot more of these developments out in Lolo. One of the Commissioners stated to me that she would not drive that highway out there anymore because it's an accident looking for a place to happen. We need to do something about the traffic before we start approving all these subdivisions. One crow in your garden, he doesn't eat very much, you let another one in, yeah, you start seeing something, but pretty soon you get to the point where you can't see the garden anymore for the crows in there. That's the way the traffic is getting out there every time we approve a subdivision we are getting more cars onto that highway. We know that something has to be done. I think that it is time to consider maybe holding down these subdivisions until somebody can give us an answer on how we are to get back and forth. That is my comments. On behalf of the Lolo Community Council, we had the discussion of this at one of our council meetings, Mr. Doran was very happy to come down and talk with us. When Mr. Doran come to us originally, he come in and he talked, unofficially, just come in as a visit, he says, I want to do things right in Lolo, and he come in and he talked about 40 to 60 houses in this particular area. My understanding, and I did not make the neighborhood meeting, but those that did tell me at the neighborhood meeting he was talking some 76-77 homes. Now we're sitting here looking at 94 homes. The average density in that area is one house per acre or less. There are a lot of areas up there, we have a trailer park that has pert near a full acre for every one of the trailers in it. A lot of houses are built on 5 acres and this subdivision, between there and Lolo, we have Marge Zaveta's ranch, with one on I don't know how many acres, but it's more than 2 or 3 acres, we have the Holts, again, one on much more than 2 or 3 acres, and the feeling of the people at the meeting that we had at the Lolo Community Council was that this is too dense of a situation. I applaud Mr. Doran for the fact that he is trying to get this onto the sewer, I applaud him for the ability to come up here and say that he is going with this subdivision with no requests for variances. I think that is great. But I don't think that we need quite that many units in this particular location. It's not in keeping with immediate area and really the thoughts of my constituents out there when they visited our meeting, it's way too dense. Thank you.

Michele Landquist: Good afternoon, my name is Michele Landquist. I trust that the County Commissioners have had the opportunity to completely review the subdivision proposal, including my previous comments that I presented at the Lolo Community Council level as well as the Planning Board. So, I will try to keep things much more brief here today and I'll just sort of read this letter that I've been working on. The 2002 Lolo Regional Plan as written, with fluid language, was intended to be used as a Lolo Regional Land Use Plan to guide us into the future, "based upon a 20 year view contemplating adequate land available for each of the uses for that time period." That's on Page 8-7. This is what the

citizens here in Lolo were told time and time again when we tried to insist on more specific and distinct language and land use designations. The Missoula County agencies and Boards kept saying that writing the plan using a fluid language approach was a justifiable method for such a guide to allow the plan to evolve with time. Our fear was that over time the fluid language approach used in our guide would be subjected to many different interpretations and the true intentions of the Lolo citizens' input would not be interpreted the way they were meant to be interpreted. That was one of the major problems with our old Land Use Plan and now (regardless of SB 326 being signed into law), this is a major problem with the 2002 Lolo Regional Plan. Cindy Klette and other County officials continually say that the citizens of Lolo had plenty of opportunity to be heard and I agree, we were heard. However, we were not listened to which is why we still do not have adequate light industrial land recommendations and why so many of us are still to this day arguing to have our property and lifestyle recognized as rural and that we want less density and rural residential recommendations to be followed. I don't know how many different times or ways we can say some of us out there are still very rural. The Lolo Regional Plan makes recommendations of land use densities based on what they could be and dependant on certain sets of circumstances, such as sewer, water, road infrastructure and adjacent land uses. Now we have developers, consultants and realtors using language like, the Plan calls for 6 to the acre, or it's designated to be, and if you look at the second to the last page that I gave you as a copy of how this property was advertised by the realtor and in that, aside from the fact, she says prime conservation homesite, beautiful homesite, great elk habitat, private yet close to town, unzoned, Master Plan calls for 6 houses to the acres. The Master Plan is a guide giving recommendations based on what things could possibly be if the infrastructure is in place to support that. Here's a direct quote from our Land Use Plan from Page 8-4, this is what the planners in OPG are supposed to use to look at a subdivision to see if it fits all of the criteria: "All of the land in the planning region is assigned a recommended land use on the land use map. The lines on the land use map generally indicate the boundaries of land use designations. These lines are approximate and have not been established with the same level of precision as zoning district boundaries, legally described by survey references. Further, the areas within the land use designation have not been established with the same rights of protest or opportunity for variance, nor do they grant the same level of entitlement or limitation that zoning provides. The recommended densities are guidelines and only one measure of substantial compliance with the Comprehensive Plan as described in the following examples. If, for instance, land is designated for residential development at a density of two dwelling units per acre, the land owner has no guarantee that the land can be approved for development at that density. Further review of the Plan may uncover limitations to development that are specific to an area. Other limitations may only be discovered with an on-site analysis at the level of project review. For example, the presence of high ground water might result in an overall allowed density of only one dwelling per acre." This proposed subdivision acreage has been noted on the map as one of only three areas in Lolo as an "Area of Special Value." That's on Page 7A-5. This special designation states: "The special value present in some areas designated for other uses has been recognized through a symbol on the land use map. This designation has been used to recognize the area of Traveler's Rest campsite, areas with important scenic value, areas with important historical value and community gateways. The Development Guidelines for areas with this special designation are: consider the special community values when developing these area, coordinate development near Traveler's Rest historic site with ongoing archeological and historic preservation efforts, identify entrance sign locations for community gateways, construct entrance signage that considers the characteristics of the community of Lolo, and development should be consistent with the historic values of the area." The creation of the Traveler's Rest State Park and its entrance off of Highway 12 and the Holt Heritage Museum are two recent changes to our east end of the Lolo Creek valley. Other changes are the Beyer Meadows Subdivision and Traveler's Rest County Store and Ropers Lounge, both of which are approximately two miles west up Highway 12, which would be about another mile past this subdivision. It should be noted here that Frank Miller, who is the owner of the Traveler's Rest Country Store and Ropers Lounge, has just purchased an additional 4.5 acres of land so he can and will be expanding his business to include more RV camping hookups and more recreational opportunities. Our 2002 Lolo Regional Plan did not predict nor consider that that entrance to the Traveler's Rest State Park would end up being created off of Highway 12, but indeed, that's where it will be. Nor did it predict or consider the creation of the Holt Heritage Museum, nonetheless, it's been a great asset to Lolo. I believe, as many other do, that the State Park entrance and Holt's Museum will enhance the gateway entrance to Lolo. That said, allowing for a subdivision of urban density and design less than one mile from the State Park entrance will be viewed as urban sprawl and works against what the 2002 Lolo Regional Plan and the citizens of Lolo were trying to protect Lolo from and most especially does not follow the Development Guideline recommendations as mentioned above for Areas of Special Value. It's ironic that our County Commissioners can deny selling a lot in the industrial park to people who wanted to develop it for a car lot because it did not fit their vision. Another point here is the hotel owner adjacent to that property didn't want the car lot and was promised a restaurant would be there someday. But we as Lolo citizens and those of us who are adjacent landowners to this proposed urban subdivision have our vision for a low density rural cluster development for this 56 acres, a development that is consistent with our area's historical values and that will not detract from the Traveler's Rest State park and the gateway to our Lolo community. As far as the design of this major development goes, I will give credit where credit is due. The design has a decent flow to it and they are complying with the subdivision regulations and they are not asking for any variances. I can appreciate how much time and money the developer has already invested in this development venture. However, for this special piece of land, right off of a major travel corridor with speed limits of 70 miles per hour, the most important problem here is that this type of dense urban development is not appropriate nor is it responsible for this piece of property. Developers who invest money by purchasing land with the intent of creating subdivisions in order to capitalize on their investment are speculating. Unzoned land does not come with a written guarantee saying that you can utilize it for the most profitable use. The courts do hold the argument that property owners must be afforded economical, viable uses, but they do not enjoy the right to the most profitable use. Believe it or not, and I really mean this, we are not trying to completely shut down this development. We believe there could be a win-win situation and one that we could all embrace. Such a development could be accomplished by building larger homes on larger lots in a cluster design with rural character. At the special Lolo Community Council meeting, we asked the developer what the difference was between the homes up on Beyer Meadows and you'll see pictures of those coming up with some other folks, and the kind he wanted to build. He said that the type of people buying the Beyer Meadows homes were typically more affluent, retired or semi-retired, whose children were grown or almost grown. These are people who want a larger home for entertaining and for when friends and family come to visit. Whereas, the type of people who would buy homes in his development would primarily be two income families with about 1.5 children per home. From our perspective, the idea of having larger homes on larger lots but less of them, is more in keeping with our special and historical land use characteristics. Other benefits to the larger home scenario are less traffic conflicts to our highways, fewer latchkey children, both after school and in the summer and the impact of the children going to the Lolo School would not be there. Also, I suspect that the historical trail through this property would be an additional amenity and selling point and better protected and respected from a lower density development compared to a higher density development. Considering these factors: the Plan's recommendations for an Area of Special Value that are not being

following, the specific changes in land use that have occurred off of Highway 12 since the writing of our plan, the placement of an urban density subdivision off of a Primary Travel Corridor with speed limits of 70 miles per hour is dangerous and irresponsible, safety and welfare of those of us who already live and drive here, and the citizens concerns recently presented to you, I respectfully request for you, as our County Commissioners, to deny this major subdivision as it is proposed now and send it back to the drawing board for one of lower density with rural characteristics and cluster design. The last page I've included here was our Lolo Regional Plan which is the plan overview and I think if you can take the time to glance over 5-E, 5-F, 5-G and Goal 6, Community Character, 6-A, 6-B, 6-C and Goal 7, General Land Use, this plan doesn't fit any of those goals. I'll leave you with the last sentence, or the only sentence from Goal 7 for the land use: "Recommend a land use pattern that collectively contributes to the community and the region while retaining cultural and physical characteristics that make the Lolo planning region unique." Thank you for time and consideration. Those posters that I put up there, those are photographic overlays of the land the way it is now with the way the subdivision will look and I think you can clearly see how full that land will be, you can tell from the one that's on the easel there how far back most of the other properties are set and there's only two properties out of that whole stretch that are set close enough to the highway, as close as any of those would be and we were going to show a video here but we couldn't arrange for the TV and stuff in time for using this building but we have significant traffic footage as well as the aesthetics, because I don't know how often you guys get out of town, so, thank you.

Jackie Cohen: I have a completely different approach. Jackie Cohen and I'm on the Board of the Lolo RSID 901, otherwise known as the Lolo Water and Sewer Board and I speak as a Board member. I'll start with some background about our allocation of sewer lines because it definitely affects this subdivision's development. Lolo had been upgrading our sewer plant for about three years prior to receiving approval for new lines late in 2003. In one meeting, probably November, 2003, Greg Robertson with the Public Works Department attended this meeting and told us that, "ta-da," we had 236 lines approved, we had 341 applicants and then handed us a sheet allocating the 236 lines. Now, our Board has a reputation for being responsive to Lolo residents and we could not accept the list without informing everyone who owns property in Lolo that they now had a chance to hook up their property to the RSID, to the Lolo sewer. We took an unprecedented action by mass mailing to the property owners to either attend our next meeting or to express their desire in writing to hook up. So at that next meeting, we granted Mr. Doran's development 1 line. We granted, actually, each development 1 line. This line is still subject to our approval. Mr. Doran and his attorney, Mr. DiPasquale, have attended our meetings where we've stated our disapproval of running this line via a pump station over the hill to connect with the sewer. This disapproval also came in the form of letters in attendance from residents at subsequent meeting. Our preference is for that line to run down Highway 12 to 93. Highway 12 main's line is gravity fed. At the Planning Board meeting May 18th, the developer and his attorney stated they are planning to run this line down Highway 12. Since May 18th, some Board members, myself included, have had some conversations with Greg Robertson who says he is intending to find funds and a way to assist with this one main sewer line, nothing so far is confirmed. Our Board meeting is June 15th, at which time we want to have substantive verification from Greg and the developer about the location of the line and how it intends to get laid on Highway 12. I'm one person on the Board. The Board can't make a decision about approving the line until we have the facts. I will add that so far we are approving sewer lines one at a time so we don't tie up lines for years and years that could be used immediately. So, conclusively, I'm asking you to allow our Board the short time we need to obtain the substantive plan from the developer about how the developer is going to accomplish the Highway 12 route for the sewer hookup.

Mark Behan: I'm Mark Behan, a resident of Lolo. Mr. Sipe mentioned a moment ago that 141 children were expected in this development. They're too close for the school bus, they're just about right for riding a bicycle. I'm concerned about 141 children on U.S. 12, which is already marked with plenty of white crosses in the barrow pit. I'm worried about them bicycling and walking along the shoulder or in right-of-way itself or horsing around as kids that age will do. I'm not confident that building or reconstructing the trail half way up the hill side will be used by the kids because I don't see kids going uphill to get on a trail to go back downhill, that's not the nature of kids. We've heard that an RSID to put in a pathway has been recommended. What if the other property owners don't go along with this RSID. Then we've got the kids back on the shoulder or in the right-of-way. I'm concerned about it and I would hope that you would incorporate into a decision about that plus the many other subdivisions that Elmer mentioned, some kind of system for pedestrian and bicycling access to the school.

Jeanette Zentgraf: Hello, I'm Jeanette Zentgraf. I live in Lolo on Sleeman Gulch and I won't repeat everything that Michele Landquist said, I would just say "ditto" as you suggested. I support practically everything she said. You have a copy, I presume, of the letter that I submitted with my husband on May 18th to the Planning Board and we're very grateful for the Planning Board's division. Four members felt that we had something to say that was meaningful and couldn't support this subdivision. And I think what I'll be doing then is just responding to Mr. Palmer who spoke for the Lolo Community Council when he said traffic is the biggest problem and it truly is and what can be done about Highway 12. I want to submit an article today to you, it's about the Colonial Parkway system connecting Williamsburg, Jamestown and Yorktown. It is a National Scenic Drive. Traveling on these parkways is a joy in itself and a large part of the great tourist attraction which has brought wealth into the State of Virginia. Though authorized in 1930, we in Montana would have to follow the very same legal procedures today before Highway 12 could be designated as a National Scenic Drive. I was hopeful after talking with Khristine Christensen, who is the Director of Planning at the Montana Department of Transportation. She told me about the many obstacles, but also the possibilities of Highway 12 becoming a National Scenic Bypass. However, before the Federal government can designate any Montana State Highway as a National Scenic Drive, Montana has to have a State program in place, which it doesn't have yet. Khristine said that a significant baby step could be accomplished within a year. A State bill became law in 1999, empowering the MDT to lay down rules for Scenic Highway designations, but with no budget. However, since 1993, MDT has received grant money to further this goal. She and her team are presently working with the State Tourism Advisory Council drafting rules for highways adjacent to publicly owned lands or tribal lands to be designated as Scenic Byways. As you know, National Forest land is adjacent to Highway 12, which is a great blessing to us. Before the MDT can designate any highway as a Scenic Bypass, the local governing board must request it. You would have to spearhead the process by formally requesting the MDT for such a designation for Highway 12. Khristine made it very plain that the local government alone determines what development will exist on a National Scenic Byway. So, our prayer is that you will restrict all building on Highway 12 in order to preserve the area's beautiful mountains, history and rural character when Highway 12 becomes an official National Scenic Byway. Please believe that iron-clad laws would protect the owners of private property along Highway 12. The State would have to purchase their land at a fair price and Eminent Domain would not be applied to those properties, by law, reflecting Montanans great respect for private property rights. The Montana legislature has been adamant about the

protection of private property rights when planning for tourism and scenic byways. Buying property along Highway 12 will be a great expense for Montana, but small compared to Virginia's investments as you'll see with this document I'd like to hand to you, because, you see, Virginia invested in tourism but had to spend much, much more. When you read these papers, you will see that Virginia had the added expenses of building the byways over swamps, as well as building many overpasses to ensure that no outside traffic could enter the historic roadways. We have such natural beauty all along Highway 12 that AAA has labeled it the Lewis and Clark Scenic Highway. We are only asking you to preserve what God has given us. One high density subdivision after another will plainly ruin the rural character. People are not going to travel thousands of miles to see subdivisions, they are trying to escape from them and enter an historic world of mountains, streams and rural character. As newcomers to Montana, we have only lived here since 1996. My husband and I truly appreciate what God has provided in the natural beauty of the mountains and rural character. Please don't take the beauty along Highway 12 for granted, it's truly precious. And I jotted down when Barbara Evans had spoken before having great sympathy for the Stratton Family Transfer and caring for people. I would just say here that I would hope that as influential people you're really our local governing board, you're it, that you would care as much for the private land owners, of course, as for all of us who live there and just as Mrs. Landquist has said, you know, we had a dream for the area too when we moved into it and then also the love for all of the citizens in Montana because you know we are a poor state. I don't think we've had the vision of tourism and what a very enlarged tax base could afford us, could provide for us. I just thank you very humbly for the time you've given me. I just would like to hand these papers to you.

Wendy Sturgis: Hi, I'm Wendy Sturgis and I also live close to this proposed development on Sleeman Creek Road. My main concern is water and I listened pretty carefully to what's been reviewed so far and I'd like to know where the water for 90+ houses would come from. I can't see under the ground and I'm real curious about that many houses running laundry, dishwashers, watering the green space and where that would come from because we already have on our road, which I'm assuming kind of up stream, not up Lolo Creek, but up the hill, basically up behind there, up behind to the left. If I water my garden for a short time, take a shower in the morning and run one load of laundry, by that afternoon I can hear some sputtering from my faucet. I'm very low water use, I be as careful as I can. I know I've had situations where my neighbors aren't getting water because I've done something. I'm just curious about the effects downhill if we add 90 houses, is that going to be, all of a sudden, a huge water crisis for people. I don't know on whose list of things to do that is, to look into that before something like this would be approved. But that's one concern I have that I haven't heard mentioned. Since Lolo is looking into neighborhood and community zoning I feel like this jumps ahead and kind of starts a bad precedent for what right now there aren't any developments like that on Highway 12 but there are several on Highway 93 and I just want to reiterate that Highway 12 is very different from 93 so on a map if a person was just looking at density in neighboring areas maybe a mile away there's something similar but is very different with the hillside slopes how steep the mountains are around this area, the creek running right through the middle of it and Highway 12 is just a one lane road, again with a speed limit of 70, usually having logging trucks coming and the speed limit in front of that lot is pretty fast so I don't know what the possibilities are for changing that and how that works, but I sure would want that addressed before something like this were allowed. Deer crossing is huge, I often seen deer right across the bottom of that very space when I'm slowing down to turn into Sleeman Gulch Road and also this map doesn't show it, but just to the west is that huge curve where the visibility can be limited and people are often trying to pass each other right in a blind curve, so I don't know if that's been addressed, especially with kids, you know, they go through K through 8th grade and then they're driving to high school 'cuz they don't like to use the bus so you're putting a lot of 16 year olds right on that highway with a lot more deer and lot more logging trucks. We've already mentioned wildlife and kids walking to school. I reiterate all of the things that have been said about Traveler's Rest being very important to the Lolo economy. I guess I was surprised to hear there was a split vote on the Planning Board and I'd like to know more about that, what professional who do a lot of this planning think. It's easy for local people to look at the map and say, oh, that's too many houses, we don't want to allow it. But I'd like for there to be some more time, especially as Lolo goes through their planning process, to learn how do you do this well over time and not just start with something so dense where's it very difficult to back track later. So I feel like it's putting the cart before the horse to approve one isolated development on this Highway 12 area and I'm just wondering what would happen down the road if this one's approved at this density, does that make it likely that, you know, each mile down the road there'll be another one popping up. We going to have, you know, there could be hundreds of houses pretty quickly and I'm just curious how you, mid process, change you're mind. It's a lot harder to tell the next developer, well, someone else did it but you can't. So, I'd like for there to be some time to allow Lolo to develop the vision for what Highway 12 should look like in the context of Lolo as a whole and I do think that Highway 12 is very different from 93 so that density shouldn't be compared to just around the corner on some of those other bigger developments that are just down the road where the highway's already been expanded to four lanes. So I think that covers all of my comments and I thank you for your time.

Chairman Evans: The way we'll do this is after we've taken all the testimony, we'll ask the developers to comment and make answers to the questions that have been raised, if they can, and our attorney to also address the issues that we, legally, can look at.

Kathleen Stachowski: Hi, I'm Kathleen Stachowski. I'm speaking for my husband as well, Christopher Barns. We live up Sleeman Gulch as well. I just have a few points to make. I'd like to say this about Lolo Creek Trails. I feel that the density does not promote quality of life for current area residents or future residents. It's not in keeping with our rural and historic nature along U.S. 12, the Nez Perce Trail, the Lewis and Clark Trail, the Lolo Trail. The traffic burden has already been spoken about so I won't go into that again. The impact on wildlife will be huge and regarding the seasonal closure that was spoken about, you know, there is no way to ascertain that the residents of the development will follow it. The mere proximity of so many people, houses, lawnmowers, dogs, traffic, lights, noise, will be a huge detrimental effect on the deer and elk and those of us who live up there value living with that wildlife so much, they're so important to us. I feel that Lolo Creek Trails contributes to sprawl and traffic, the decline of native species, noise, air and light pollution, which is another big one for those of us who live in the rural areas and it really does nothing more than line the pocket of a developer. So I really urge you to deny it, it's far too dense for our neck of U.S. 12. Thanks.

Diana Mitchell: Hi, I'm Diana Mitchell. I have a couple of letters to read here for you. One is from Debbie Richardson, she lives up Highway 12. *"To whom it may concern: I am a resident of Lolo Creek and we bought my folks house and land that has been in the family since 1966. And I am real worried what 94 homes is going to do to our rural highways. With all that traffic, we won't even have a safe walk on Highway 12 anymore. I'm not able to come to the meeting today because I work days. It sure would be nice if there were some at night we could go to. But I am against that many homes. I would not even want to sit out on my front deck, because I don't want to look at something like that out my front*

yard. And as far as the sewer and water, what is that going to do to our wells. And our taxes, what is that going to do if this gets in. Our taxes on 1 acre are out of this world now and I can only hope they don't go up any more. Please look out for us that love the land and everything it means to us. If we have to have this, not so many homes on this land. A homeowner up Lolo Creek –Debbie Richardson.” And I have a few comments myself. While the Lolo Creek Trails subdivision proposal requests no variances, it poses numerous dilemmas. How do the residents safely enter and exit the development. Highway 12 is a major travel corridor for semi trucks, log trucks and tourists, with posted speeds of 70 miles an hour. How is the proposed development in keeping with the surrounding developments. Does it jive with existing density. Current homes in the area are at a maximum of one to the acre. Does this proposal fit in a rural environment. The lower Lolo Creek valley is pastoral in nature, the existing homes adjacent to the proposed subdivision all have dense buffer zones along the highway frontage, screen them from public view. How do you provide for the safety of elementary school children trekking to and from school. Kids are inherently distractible, curious and quick by nature. They dart from one place to another incautiously and quickly and Highway 12 offers them no safe passage. How is the development to connect to the RSID 901. Who bears the burden on the costs. The 901 Board has not even met publicly yet to discuss this issue. Any solutions are speculative and any assurances given are ethically questionable as they have not been brought to the public and/or the current members of the RSID 901 District. Does this proposal adhere to the covenants imposed on the property by Harold and Lena Kuney in 1962. I think not. I urge the Commissioners to send the Lolo Creek Trails subdivision proposal back to the drawing board. Public safety is put at great unnecessary risk. The development proposal fits an urban model, not a rural one, and this portion of Lolo is rural by choice. I would also like to point out to you that the Lolo Regional Land Use Plan suggests maximum allowable density. At no place in that plan is density recommended. The anticipated 94 trips per hour out of this development are in addition to those that are going to be coming out of the Beyer Meadows subdivision and the Traveler's Rest State Park. Those numbers need to be put together. Thank you.

Pam Diamond: I'm Pam Diamond. I'd also like to speak and I'll make my comments really short, I'll do the "ditto" thing. But just kind of as an addition to what other people have said. I live up Sleeman Gulch also. We recently entered into self-zoned because we were concerned about the possibility of subdivisions and density in our area and so we self-zoned at 10 acres per unit and so I think that that's really significant when people are making those kinds of decisions themselves and then someone comes in from outside and makes the other kinds of decisions. So I think that that needs to be taken into consideration when we talk about the urban versus rural atmosphere. Secondly, with regard to the traffic, there's no left turn lane that's been proposed, at least to my knowledge, that's been proposed into that subdivision and so, although they have slip lanes coming in when you come from Missoula, there's been no accommodations for the traffic that will be left turning into that, into the subdivision and indeed, that is, as everybody said, truck traffic time on a blind corner, so I think that that really needs to be looked at. The other thing is, is I think in keeping, I've lived in Lolo since 1984, and when I moved there, Lolo was kind of a bedroom community for Missoula, it really was, you know, there was, it, you know, we all commuted back and forth and it was, Lolo didn't really have an identity of its own. And I think in very recent years, the last two perhaps, I really think since the Comprehensive Plan has been developed and but most especially since Traveler's Rest has been recognized as being such an important national perspective, it's one of two places that have actually been authenticated as Lewis and Clark places that they camped. It's huge in terms of what it can do for Lolo in terms of creating an identity of its own and I really think, to, you know, dump just a very typical urban subdivision in that area right now when I think Lolo's really on a cusp of change and developing its own self identity is really bad timing. And so I would like you to consider that too as you look at the density issue especially with this subdivision.

Bruce Landquist: Hello, my name is Bruce Landquist. I'd like to address the Board somewhat briefly. I'll try to recap some of my comments so that I won't go over some of the things already covered. It seems to me that this major subdivision review process has really surprised almost everybody that's been concerned with it. I hope that we can all learn a little bit from what's happened in this process because we can. The Lolo Trails major review process seems to have surprised almost all concerned in this endeavor and I hope in the end we'll all learn a little bit on how this process has worked and maybe we can improve it. There are a few specific things I want to address. The interpretation of the Lolo Regional Plan has been a contentious issue and frankly I feel it's fluid language so that it could change and adapt as necessary to remain viable for 20 years, basically turned it into a guide full of ambiguity. It depends on how you interpret certain sections of it, how you put your spin on it and if you leave certain sections of it out. If you do that, you can craft it to accomplish just about anything that you want. Some of us here today are not trying to be argumentative, we're just trying to point out that there are certain elements that have been left out and there are certain things that have been interpreted that we don't necessarily agree with the way that that's been done. Unfortunately, the Lolo Plan was a drawn out process that took years and a lot of the people here probably are just as familiar with it as anybody at OPG because we helped craft it. The rural medium density designation that was mentioned in the Missoula County Regional Land Use Guide is completely absent in this plan and that just amazes me because I think it fits precisely what everybody tried to accomplish in this end of the valley. The historical research and integration with Traveler's Rest Park and the theme for the area of Lolo hasn't had any work done on it at all in this part of the drainage and the citizens had to step forward and address these shortcomings so that something would be done about it. I don't think that was their job. The transportation infrastructure in Lolo is already under heavy pressure. The County roads in Lolo have not been maintained at an acceptable level and adding even more roads to the roster for County maintenance kind of flies in the face of reason or accountability for me. When we were doing a study on the feasibility of incorporating, we had to inventory all the roads in Lolo, every one of them. The condition of those roads was one of the pivotal issues about whether incorporation could even work in Lolo, because the infrastructure is already shot. Nobody wants to be responsible for them. They're gone, especially up on the hill. At this point, I'd like to comment on the traffic safety issues in more detail and to better understand these I ended up having some candid conversations with the Montana Department of Transportation staff, four engineers there, the Montana Highway Patrol and the Missoula County Sheriff's Department. And I asked those people to give me a representative that they thought could comfortably address some of the questions that we had about the traffic issues out there and they ended up being Captain Frellick and Captain Ibsen. They all agree on the following statements. Highway 93 from Lolo to Missoula is already a heavily taxed infrastructure. Both law enforcement agencies agree that they do not have the funding or the man hours available to patrol this stretch of traffic to enforce it the way that it would be appropriate for the traffic that now exists. They are in a reactionary mode and feel any future buildout in the Lolo area will only dilute the level of law enforcement available. They're not happy about this, but to them it's a fiscal reality. MDT is in a reactionary mode now, they do not control the buildout in the Bitterroot valley or this end of Missoula County. The time when proactive planning or highway projects could have been accomplished is long past for this stretch of highway. The new study to be done on this stretch will address possible fixes for traffic conflicts, no one knows where the funding is going to come from for the fixes or when it will be available. There are no projects or funding for them



listed in the Missoula Consolidated Planning Board Transportation Plan for the next twenty years, save 2.3 million dollars for surface maintenance for this stretch of highway. As far as Highway 12 from Lolo Pass to Lolo goes, it is a heavily traveled corridor used for interstate commerce, recreation, tourism and local resident commuting. The speed limit is 70 miles per hour on this highway and that combined with the traffic conflicts that now exist, as well as the physical characteristics of this road, make it an inherently dangerous highway. As stated earlier, both law enforcement agencies agree that they do not have the funding or the man hours available to patrol this stretch for traffic enforcement that is appropriate for the amount of traffic that exists now. They are both in a reactionary mode and feel future buildup in the Lolo area will only dilute the level of law enforcement available. They are not happy about it, but it is a fiscal reality. MDT is in a reactionary mode now, they have no control over the buildout in the corridor. They feel the time for proactive planning and management on this highway, as far as project and funding, is now. They are no projects or funding for these highways listed in the Montana Consolidated Planning Board Transportation Plan for the next twenty years. So there will be no proactive planning. There are some specific items that I would like to address concerning this subdivision relating to the Missoula County Subdivision Regulations amended 12/2000. Article 1, General Provisions, Paragraphs 1-3, Purpose and Intent on Page 6: "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 congestion on streets and highways ... to support the purposes of MCA 76-3-102. These regulations are also intended to promote: the avoidance or minimizing of congestion and the avoidance of danger or injury by reason of natural hazard or the lack of water, drainage, access, transportation or other public services." Furthermore, Article 3 in the Subdivision Design Standards, number 2 states: "Hazardous Lands: Land on which there is evidence of hazards such as, but not limited to, flooding, swelling soils," it goes on for awhile, "or vehicular traffic hazards or congestions," and it goes on some more, anyway, "safety and/or welfare of the present or future inhabitants of the subdivision or its environs which will impose unreasonable burdens upon the general public ... requirements for the excess of expenditure of public funds shall not be approved for subdivision until an engineering design sufficient to alleviate the foregoing hazards or unreasonable burdens has been submitted by the applicant and approved by the governing body, as required by MCA 76-3-504, as amended." That said, let's look at some numbers on the highway. I agree totally with what Mr. Palmer said and part of this will be pertinent because I actually put together just a small portion of the numbers to look at them a little differently. The latest highway trip counts given to me by MDT yield the following Highway 12 traffic data for the area of this subdivision. Trip counts per day for all vehicles, 1,705; 240 of those are commercial vehicles. The Lolo Creek Trails subdivision projects 768 trips per day which yields an increase of 45% in the traffic. The Beyer Meadows subdivision projects 321 trips per day which yields an increase of 19% in traffic. The Traveler's Rest entrance on Highway 12 projects an average of 150 trips per day which yields an increase of 9% in traffic. When you add all these up, you just increased the traffic on that highway by 73%. Be advised that we have not yet addressed the increase in tourist traffic that will be coming for the bicentennial that will bypass the Traveler's Rest entrance, no one knows what that volume will be. The number of vehicles going down the highway is one issue, but every time you turn off the highway or access the highway, they call it a traffic conflict. They mean by that that it creates a hazardous condition that wouldn't be there if the vehicles weren't turning. So, basically, the subdivision will contribute 768 conflicts per day at two points in the highway where vehicles are traveling at 70 miles per hour. I live right across the street from where this is, I've been watching the traffic for 26 years. The slip lanes for right hand turns will help half of the conflicts, the right hand turns into the subdivision. It will not completely solve the right hand turn conflicts because the people anymore are too impetuous and impertinent on the highway to pay the attention that they should be. The left hand turn on entry conflicts have not even been addressed and there's no affordable mechanism to fix these. So they've just been ignored in the hope that they'll either go away, apparently, on their own, or be overlooked. We have repeatedly said that Highway 12 currently has dangerous traffic conditions that require attention now. We are certain that an increase in traffic of this magnitude of 45% will only exacerbate the dangerous conditions in this area. There is no funding or projects scheduled for this highway for the next twenty years to address increased traffic or safety. Therefore, I consider a major subdivision on this highway dangerous and irresponsible and the burden for the liability should go to the County of Missoula since it will be the governing body that passes the subdivision. There seems to be a feeling with the Department of Transportation that they have no control over land use. There seems to be a feeling here in Missoula County that they have no control over the highways. We have arrived at the situation that Mr. Palmer so adroitly spoke about. We have to do something about it. What are you going to do. Somebody's going to have to step up to the plate someplace now and start figuring that out. And unfortunately it looks like this is the venue for that, so, it's unfortunate, I think the developer's done a good job in his development proposal. I think his timing was terrible, I think he picked the wrong place and when you review what Colleen Dowdall told the Planning Board and all the conditions that they put on the proposal and still they did not pass it and the Planning Board impressed me as being a rational body of people. They did not like what they had to do, but in the end, they did not recommend it. That seems there are some pretty good reasons why. Thank you for your time and I'll leave these copies for you folks.

Marge Zaveta: Again, writing in regard to the proposed density on the Lolo Creek subdivision. I own and maintain a 72 acre homesite next to the proposed subdivision where I've lived and raised my children for the last 20 years. A subdivision of this magnitude is not in keeping with the historical and cultural aesthetics of the area. It more appropriately represents urban sprawl in a rural environment. The Subdivision Regulations as adopted by the County of Missoula state in Article 3-9, "the subdivision shall not result in the destruction, loss or damage of significant natural, scenic, cultural or historic features." It has been determined and documented that there are three National Historic Landmarks which come into play, the Lolo Trail National Historic Landmark, the Lewis and Clark National Historic Trail and the Nez Perce National Trail. While further study is required, the trails do in fact exist on the proposed subdivision property and should be preserved. A subdivision of such high density would not be an amenity to such a historic site. A lower density with fewer disturbances to the natural environment is more in keeping with the historic preservation guidelines. On some of the pictures there, the photos of the houses are the subdivision up the road, it's a quarter mile, half mile up the road that Mr. Doran has some houses in. The first home that's completed has been sold already, they're on one acre lots, much more in keeping with the aesthetics of the area and you can see the mountains in the background. The second one is his second home in progress and the third is the third lot his has, you know, to be developed yet. Certainly it's a much nicer subdivision, 40 homes I think, projected on 60 acres, much like the same parcel that we have next door. So it seems that this would be a much more appropriate plan and he's certainly capable of doing it, the house that is already sold. To move on, there's also a historic irrigation ditch which traverses the property, west to east, ending on my property. The ditch priority dates to 1884 and has been in use for 119 years. The developer would like to close the ditch system and is pursuing court proceedings to do so, which has been going on for several months at a great expense to me. The ditch is currently up and providing water to my property. A copy of the reinstatement of the water rights are included there and also I included a copy of the warranty deed for Mr. Doran's property that states, you know, you adhere to the easements,

either apparent or recorded. The ditch has been there for 119 years, it's apparent, it's in use and the pictures that I provided show its existence there through the property onto my house or my property. It is currently up and running. The third area of concern is the projected increase in traffic a subdivision of this density would create. Highway 12 is a major travel corridor with high volume truck traffic at a posted speed limit of 70 miles per hour. The Missoula County Sheriff's Office has expressed concern not only regarding the large volume of children playing in and around the irrigation ditch but also the increased traffic load with no provisions for left hand turn and safe transport for children to Lolo School and I enclosed their letter dated February 11, 2004. The increase in traffic from their projection is 768 to 1,000 trips per day will then feed into Highway 93 North on an already overcrowded congested highway to transport children to school and Missoula. I attached, my brother is actually a sergeant with the patrol and has been for a number of years, in Lolo, lived in Lolo and worked Missoula area and now is in another area and also spoke with Captain Frellick and he provided the accident report numbers for Highway 12 and Highway 93 and now that the traffic count is up to, I believe, 40,000 through the intersection of 93 and 12, they are projecting even more accidents. The developer has stated that the water and sewer service will be provided by Lolo RSID 901. I have concerns regarding the costs involved to property owners along this corridor. Greg Robertson's letter dated February 10, 2004, states, "the district will not pay to re-run the model with the new alignment. It will be your client's financial responsibility should this be the final alignment. Additionally, any system improvements necessary to accommodate the flow will be at your client's expense. The district will not participate in any costs to upgrade the collection system." Mr. DiPasquale stated at the Planning Board meeting May 18th, on page 20, "it is my understanding that the funding is available in his (Greg Robertson's) budget to accomplish that work. I would like to have in writing who will have to incur that cost for this system to alleviate another Mullan Road situation." A final point of concern are the potential existing covenants on the proposed property. It has been brought to my attention through legal counsel that the original Kuney subdivision had strict covenants regarding subdivision. My legal counsel is investigating the subdivision boundaries so at this time I do not have more specific information but will reserve the right to pursue at a later time, and I did include a copy of those covenants from the original Kuney subdivision. Please consider all the public comments you have heard here today and make a decision which will be a win-win situation for both the residents of Lolo Creek and the developer. Please reduce the density making for safer travel on the corridor while allowing the developer to build larger homes on larger lots providing a reasonable profit to him while providing an aesthetically pleasing subdivision in a historical rural area.

Steve Palmer: Hi, my name is Steve Palmer, I live at 11350 Cherokee Lane in Lolo. I live in the upper right hand corner of that map displayed on the easel. I'll be very brief. Ditto, ditto, ditto, ditto and ditto and ditto one more. While I have no problems with the rights of a property owner to develop their property, I keep hearing about public funds, my money, our money, being spent to accommodate this subdivision. That's unacceptable. Thank you.

Mindy Palmer: Good afternoon, my name is Mindy Palmer, that was my husband Steve that just spoke. I've decided to briefly say that for many months, up to and including this meeting, Lolo area residents have eloquently, vehemently, passionately, extensively and thoughtfully voiced their concerns regarding the proposal of this 94 lot subdivision. They have sent you e-mails, they have sent letters, they have stood up and vocalized their concerns in Council meetings, town cafes and within grass roots committee meetings held throughout the valley. I bring no revolutionary concerns to the table. And while I, reluctantly, can say that the developer and his reps may indeed be fully compliant, that does not necessarily mean that this is the highest and best use of land at this level or density or at this point in time and that it seriously should be and needs to be re-evaluated. I found a wonderful quote by a very smart lady by the name of Margaret Meade that I would like to share with you. It says, "never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is only thing that ever has." Please take all of our comments into careful, careful consideration. Thank you for your time.

Steve Adler: My name is Steve Adler, I'm a member of the Historic Preservation Commission and I've been tracking this project through from the point of a historic perspective. Just wanted to impress upon you the unique nature of this project and its relationship to the Lolo Trail and remind you that the Lolo Trail is not an entity unto itself, it is the context of Traveler's Rest. Traveler's Rest has come into our awareness very strongly in the last few years and what made Traveler's Rest important is basically the Lolo Trail. What's also very unique is that crossing this section of land in particular and land abutting either side of it, you have three national historic designations that overlay each other. That's not so, it's remarkable in its own right. What is additionally remarkable, I think, is that because of the nature of this project, there are no State or Federal triggers for protection and protection of that resource falls in your lap and you find yourselves kind of the unexpected stewards of national treasures. One thing that has encouraged me greatly in this process, even though we were all somewhat taken by surprise at the last minute by the Lolo Trail issue, is the developer's ability to adjust and their willingness to provide public access across that land and provide interpretation of the Lolo Trail. The thing that makes the Lolo Trail so difficult is that it is a trail and trails, by nature, are really tough to deal with because it's not on a single point, it's not on a single property. No trail exists on one single property and no trail exists without every property that it connects. So I'd like to thank the developers for being responsive within their scope of work to provide access and interpretation of that. I would like to speak directly to the cultural survey and encourage you to make it a condition simply because, again, it's the nature of trails. We know it was there in some form but everybody's been talking about what happens if you find something, what happens if you don't find something, the fact is to find out anything about the significance as it applies to this land, we actually need to just look at it. So I'd encourage you to make a cultural resource survey part of the progress of this proceeding. I'd like you also not to forget, as many of us have when we've gotten wrapped up in the Lolo Trail issue, that there are a number of historic resources immediately related to this as well. The Kuney Homestead, dating from the late 1800's, the ditch and Woodmen Grade would all of themselves qualify for listing on the national historic register and I believe those should receive some consideration as well. And in the effort of keeping things brief, thank you very much.

Dick Ainsworth: For the record, my name is Dick Ainsworth, I'm with PCI. I'd just like to make a couple of general comments. I believe that this is the kind of a subdivision that the County Commissioners should embrace. You went to great length, as do all of our governing bodies, in developing Comprehensive Plans which are guides for development of and protection of various areas around Missoula. This particular area is covered with the Lolo Land Use Plan that was adopted a little over two years ago after many years of consideration and study and it was designed as a guide for the development of this property and for the protection of the property in the area. The developer embraced that plan in developing this particular proposal. They also took into consideration the Missoula County Subdivision Regulations which are an extensive set of regulations that your Board adopted, I guess not you personally, although Barbara probably did, and over several years they've been amended. They're an extensive set, again, of more stringent than guidelines,



they're really rules and regulations that you have to follow in putting together a development. The developer followed all of those to the letter, exceeded them in many instances. Put together what we feel is an excellent proposal for this particular piece of property. The developer agreed with a lot of the folks that you've heard here today that the six per acre in the Lolo Comprehensive Plan was perhaps a little dense for this area. This proposal, in fact, is about a third of that density. It is in many ways a clustered type of development if you look at the map on the wall, even if you disregard the hillside green area at the top of the map, there's substantial open space, I don't remember the exact numbers, but there's somewhere in excess of 10 times what's required by the State and County Subdivision Regulations of good level usable bottom land, much of it adjacent to the highway. The setbacks from the highway exceed by about double the requirement of the Subdivision Regulations which calls for a Primary Travel Corridor. We've provided that and in addition to that, we've set it back further and provided additional open space. We did, early on, look at less density on this property as Elmer mentioned. Went to the Lolo Community Council with a couple of previous plans. This property, according to our calculations, could probably be developed at somewhere in the vicinity of 70-80 homesites with individual septic systems and wells or on-site septic, that would be a community septic system but it would be on-site and a community water system. After further study, we thought that that probably wasn't in the best interest of the land. We started talking with Greg Robertson and the Lolo Sewer and Water District about the possibility of extending sewer and water up there. In answer to the lady that wondered about water and concerns with the water table who lived up in Sleeman Gulch, the water for this development will be coming from the Lolo Sewer and Water District so it will not be coming from wells under this particular property, although one of their higher production wells is down valley a little bit on the Holt Ranch, so it ultimately comes out of there, but we're not proposing additional wells on this property. The sewer main extension that's been discussed at some length, we had an original proposal that the developer would have funded entirely, to connect this to Lolo Sewer and Water District. Public Works Director Greg Robertson asked us to consider another alternative that would extend the main further down Highway 12 to 93 and across 93 to connect into existing infrastructure that's in the vicinity of the railroad and that line follows the master plan for the Lolo Sewer and Water District. It seemed more logical to us, we're willing to work with them to do that. There is no intent, and never has been any intent, to make adjacent property owners along the way pay for that and we've said that repeatedly and I think Greg has also said that repeatedly, unfortunately he's not here today. This proposal was submitted to OPG, went through complete review by all of the agencies that get contacted, including the folks that review it for concerns with traffic and safety issues, those primarily being Greg Robertson, the Public Works Director, and his office and MDT. Both of those entities felt that the improvements that we were proposing to connect to Highway 12 and to Highway 12 itself, were adequate to serve this increased traffic. Those are the people that are responsible for reviewing those sorts of things. None of them said that it was a problem, none of them raised a red flag. The staff, after spending a good deal of time reviewing this themselves, considering all of the comments they got from other agencies, developed an extensive staff report with a list of conditions for approval. The developer is in agreement with all of those conditions as recommended by staff, I guess subject to the one change that Ray mentioned earlier regarding the easement across the property for the irrigation ditch and basically in agreement with the vast majority of those conditions recommended by the Planning Board although the Planning Board didn't take action, so I guess maybe they didn't make a recommendation, but suggested by them if you will. So, basically I feel this is the kind of development that you should want to see. It meets the guidelines of the plan that you adopted less than two years, although it's substantially less dense than that plan and the neighbors, I know, feel that it should be perhaps less dense than that. It's interesting to note that a couple of years ago I was in front of you with the Beyer Meadows project up the road a ways, acre lots. A good number of the people in this room were there and thought that was much too dense. They're now here today saying why don't you do something more like the Beyer Meadows project, that's a nice subdivision, and I think it is a nice subdivision and I think it fit in that area very well. At that time, the old Lolo Comprehensive Plan called for that area to be six units to the acre and we were doing about one to the acre. The Comprehensive Plan here now calls for this to be, recommends maximum density of six to the acre, we're proposing about two to the acre. So I feel we've presented a plan here that meets or exceeds all of the rules and guidelines that you folks have adopted and put in front of us to try to meet. We feel we put together a nice development here. True, the developer will make a profit at this, he hopes. If he doesn't, he won't be doing it. But to say that all this will provide is money in the developer's pocket is certainly inaccurate. The objective here is to provide places for people to live and residents of Missoula County to live and at one point in time or another, all of the folks that live in Lolo, there were no subdivisions there, if there were none approved, they would not have anyplace to live. The majority, maybe not the majority, maybe all of Sleeman Gulch was developed by Certificate of Survey and outside of the subdivision review process, so many of those parcels didn't go through review, but we feel we've presented a good plan here, it meets or exceeds all of the requirements and recommendations that your body has put before us and we'd ask that you approve it. Thank you.

Myra Shults: Good afternoon, my name is Myra Shults. I'm talking to you with my Lolo native hat on right now. When I was born back in 1941, my father was the Ranger at Lolo Ranger Station. Things have changed a great deal. When I moved home to the house that my father built just north of Lolo 11 years ago, since then I've seen a tremendous amount of change in Lolo. Lolo is not incorporated and so the problems that exist in the town of Lolo lie at the County Commissioners feet and one of the big problems that exists that has been alleviated a little bit by the traffic lights, is there's no way to get from the Post Office, direct way, to the grocery store. And so we all have to go out on the highway. Now that shows a lack of planning for the town of Lolo. And Barbara, I understand you used to live out there, you now live in town, I don't know if you go out there, but if you do, if you go at peak hour, you'll know that what Elmer just talked about is true in spades. Lolo just grew like topsy, the town, and now we're seeing the outside, the perimeter of Lolo growing like topsy. And it doesn't matter if the subdividers come in and they meet all of the rules and I'll discuss that when I put my attorney hat on, but it just keeps growing and all I see and read from the County Commissioners is, you know, we feel your pain but there isn't anything we can do about it. Well one, now I'm going to put my attorney hat on, and one thing that you can do about it is what you're statutorily and regulatorily required to do, and that is that the County, the governing body, weighs the effects of a subdivision and I'll just mention three of the primary criteria that I heard today, wildlife and wildlife habitat, public health and safety and the natural environment. Those are just three things. I was looking at my subdivision regulations and I will not repeat to you what Mr. Landquist said, but it's interesting to me on Page 6 of your subregs that the, number 6, it says the regulations are intended to promote this, is the provision of adequate transportation, water, drainage and sanitary facilities. Now I recognize that there's an RSID there and that the RSID addresses the water and the sewer, but I'm here to tell the County Commissioners, first ask you to delay your decision and if your 60 days is up to ask that the subdivider consent to an extension of time, until after the meeting on the 15th of June, so RSID 901 can address some of the concerns. And I understand that the County Attorney's Office doesn't think the 49 Op Attorney General 7 applies in Missoula County or to the Missoula County subregs. I think it applies and Ravalli County's been sued on it, Sanders County's been sued on it and Lake County will soon be sued on it, and so you

can at least give lip service to complying with that, the intent of that AG's opinion, by continuing your decision until after the meeting on the 15th. Thank you.

Marge Zaveta: I just wanted to add one thing, when Mr. Ainsworth was speaking to the density and the location, if you look at those pictures that I have submitted earlier of the ditch and you can see the slope there, that open space on the top that he's saying is open space, that's true, that's not a playground though, it's steep, it's loose soil, it's easily eroded, it's not something that 150 children are going to be able to play on. Open space in the bottom, between the two entrances, it's underwater right now. There's ground water up there. I don't think that given the number, the 94 lots, if you add up that acreage, there's 20 acres, 20.something, 100 homes on 20 acres is a more realistic presentation of the density. Thank you.

Michele Landquist: I'm sorry Barbara, public input is public input. Regarding what Mr. Ainsworth said as far as that being a cluster design, it has some elements of a cluster design, and as far as it being a good design, it's a design, it's a typical residential design in our own land use plan, and I submitted originally copies, enlargement copies of this to the Lolo Community Council, so you have them in your comment packets, this is a design much like theirs, which is not recommended for areas in a drainage and this cluster design is a design that is recommended. The elements of cluster design that they're talking about is the open space, some of which they had to leave for drainage basins and the steep hillside that you couldn't build on and the amount of parkland that you have to allocate when you do a subdivision, either that or money. And as far as him saying he looks around this room and saw some of the same people that were up at Beyer Meadows, I know some of the people that are up Beyer Meadows area that didn't want that subdivision there and I looked around this room very quickly and everybody was shaking their heads, he's very much mistaken, we were not at that hearing and we have told the people that live in the Beyer Meadows area how lucky they are to have had that subdivision instead of what's trying to be jammed down our throats. The Beyer Meadows is up on a bench with lots of big mature evergreen trees covering it, you can hardly see it from the road driving up it and down the road. This is going to be a major scar and stand out like a sore thumb in our neck of the woods, it is nowhere near what is existing there now as far as characteristics go.

Jeanette Zentgraf: I just wanted to say that I think I was the only one of the group that's here, maybe Kathleen was there too, there were a few of us from Sleeman Gulch that did oppose the development that you're talking about because it didn't support what was the new plan, the new design by the County planners. It came in under the old and we opposed that and I do oppose it because it's just now beginning and it looks just lovely, but by the time all the houses area in, it's going to be a lot of traffic and it does spoil the rural character even though the houses are beautiful, just beautiful, it's altogether different. It's a very urban development.

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

Ray DiPasquale: I guess, if you'd like the response to some of these or not and if there are questions specifically that you'd like answered. With respect to a lot of the comments that were made regarding the MDT approvals and the access to a site, MDT does have the ability to deny approach applications and they do it and it's happened in Lolo where they will deny an approach application for an unsafe condition. That's not been the condition in this particular application, with our discussions with the MDT as well as Greg Robertson of Public Works Department and they do work in concert in providing our access issues to the highway. We agree that the guidelines are guidelines and the guidelines of six units to acre as they've been mentioned, are not feasible on this property for aesthetic purposes. They talk about lining the developer's pockets and I think that's really an inaccurate statement. If he was intending to line his pockets, maybe he would put up six units to the acres, maybe that would be the kind of presentation that was here. The discussions about the kind of units that he's building out there and Beyer Meadows I think goes toward the quality and the nature of the type of builder that Mr. Doran is. There were comments regarding the promotion of the preservation of natural resource, I think we also discussed the amount of open space that's being preserved here and the historical preservation and the reference to the historical issues that are noted in the plan and we discussed the possibility and the desire to actually address that with the interpretive center and the public easements across the property. There was a comment about the pathway up the hill not being utilized as a child path or something, the path that the children will be walking on towards the east is actually at grade and can be accessed through the roadways and through the rights-of-ways and the sidewalks that are going to be provided on both of that roadway. There was a discussion about the speed limits on Highway 12. We would definitely support the request for a lower speed limit along Highway 12. Right now the MDT tells us the conditions and the volumes don't warrant the reduction of the speed limit on the highway. At perhaps some time in the future that will be available. We would certainly ask to promote that if there was another functional way to do that. The sewer service and the water service connections, I think Dick addressed that, that the water service is coming from a high production well that's located on the Holt Ranch property and it's already been plumbed and set up to service expansions along Highway 12 and that's the consensus of Mr. Robertson as well as the engineers from HDR who monitor that process. They're actually appreciative and they understand the benefit of having a sanitary sewer line along the highway parallel to the creek. It preserves the nature and intent of the potential contamination of the creek by septic systems in that area but it also provides a huge measure of protection for the high production well, it is the highest production well in the system at this time as we understand it. The discussions with Mr. Robertson about the sanitary sewer access, I think someone had mentioned that comments that we might have been making about the sanitary sewer service were inappropriate or ethically questionable, I think in speaking with the representative of the County and the Public Works Director is an ethical way to approach that type of improvement and I believe that he'll be at the board meeting and lay things out like he has, I believe, for you folks already, he had told us he had met with you to discuss the improvements that we're looking to work with him on. There are commercial and industrial developments along the highway, I think you're both familiar with the types of uses that are along Highway 12, there are commercial properties, there are industrial properties, in fact, directly next door to the site there are industrial properties, so I think that was a misstatement by one of the persons of the public. Let's see, we did discuss briefly with the MDT the possibility of adding a left turn lane in for the eastbound traffic and that was rejected as a design alternative at this time. I think that they're responsible in terms of projecting their approach permit approvals and they have, as I said before, in the past denied approaches because of that particular safety reason. We do believe that the project promotes the health, safety and public welfare, we're providing the housing with water and sewer service, proper access issues and the capacity is right now adequate to service these projects especially with the water and sewer services and I understand from Mr. Robertson, again, that the plant, the sanitary sewer plant is going to experience another upgrade in classification in terms of treatment and capacity for the number of connection units available. However, that may not be available, he said, until late summer of this year, that was his estimated projection for that improvement. Right now, those connection units, those domestic connection units are available for this project. There

was some discussion about comparisons to Beyer Meadows and it is a different project as those units are on individual subsurface disposal fields or septic systems and also individual wells and this is a different project in nature because of some of those issues as well as the nature of the development that was originally brought forth by Mr. Doran. In addressing the discussion about the flow calculations and the direction of the alignment, I think Ms. Zaveta brought up the issue about the developer being responsible for providing the funds for the assessment of the downstream capacity of the sewer system once we had a different, that was a different alignment that was in place, as well as for any improvements that must be made between the connection point and the plant. That was for the alignment that was originally proposed to access the system at a location near Cap de Ville Road. Actually, the developer did pay for that assessment and it was found to have adequate capacity both through that system into the plant, but it's a moot point as that alternative is no longer being presented. I think in the context of Traveler's Rest and the discussion we've had regarding the preservation of the trail. That's been discussed on several different occasions, several different arenas and we feel that we have an appropriate plan and a good plan to address the kind of preservation techniques that will allow for the interpretive center to show everyone exactly what that trail was about. Most of the other discussions are fairly esoteric in nature and subjective and I don't want to tie up any more with those kinds of discussions but, as Dick said, we feel this is a very good plan, an appropriate plan and a plan that the Commissioners should embrace.

Commissioner Carey: Ray, we've been asked to wait until the June 15th meeting of the RSID 901 folks. Is that something the developer can do?

Ray DiPasquale: I'm not sure. I guess that Colleen has made it apparent to us that that's maybe not something that has to be considered. I'm not sure what interpretations on that, but I would think that with Mr. Robertson's giving, I think, both of you the benefit of his expertise in this process and where he has studied it and expects it to go, along with our support of that, we feel very confident that that's going to be an approachable solution and that's, quite frankly, at the developer risk.

Chairman Evans: I'd like to ask Colleen to discuss that issue with us, please.

Colleen Dowdall: If you approve the subdivision today and the Lolo Sewer and Water District is not able to service the subdivision, the plat, in its current condition, current design, cannot be filed. So, it's a separate process for approval. Your approval is for the creation of the lots. There will be a public meeting to consider whether to allow, actually, I don't know what stage you're at in the process with the Lolo Sewer and Water District, but my impression is that it's to consider the type of line, the location of the lines and that you've already been annexed in a public process into the district.

Ray DiPasquale: Correct. We have not asked for the connection units for the parcels yet.

Colleen Dowdall: And will you do that on the 15th?

Ray DiPasquale: We're actually taking Greg's lead on that. There doesn't appear to be, at least from his recognition, an application that either he or Dave Haverfield could present us with that said, here's the application, fill it out. It's, I think, more in the nature of correspondence to Greg with respect to our requests for service.

Colleen Dowdall: Do you know what the purpose of the 15th's meeting is, or the next meeting, whenever it is?

Ray DiPasquale: I believe it's a regularly scheduled meeting, if I'm not mistaken.

Jackie Cohen: The approval of the line is a topic on the agenda.

Colleen Dowdall: So, it's a topic for discussion.

Jackie Cohen: Right, public discussion, with Greg Robertson in attendance, so that we can take a look at what the funding is and make a decision about.

Colleen Dowdall: So, it is a decision item?

Jackie Cohen: All I can say is, one person on the board, it is a topic on the agenda. I would hope that we could make a decision but I can't guarantee that.

Colleen Dowdall: And what decision does your board typically make, do you approve hookups or is that something that is done administratively?

Jackie Cohen: The decision that we can make is to approve hookups, yes.

Chairman Evans: It's my understanding that Greg, when he spoke to us last week before he went away, that he preferred not to have this line go up over the hill, he preferred to take it along Highway 12 and he explained the funding mechanism he intended to use, so I would assume it would be discussion with your board to discuss what he prefers versus what has been suggested and hope to get your blessing.

Jackie Cohen: I would like to hear that and for the whole board to hear what his proposal is. Correct.

Ray DiPasquale: My understand is that the RSID 901 board makes recommendations to the Commissioners.

Chairman Evans: That is true, they're an advisory board.

Commissioner Carey: Ray, would you talk a bit about the phasing in of the project with regard to a trail to Lolo, because you had mentioned at the start that you were willing to look at a couple ways of doing that. I'm just kind of curious about how many kids we're talking about when the first phase is done and are they going to have a safe way to get to Lolo.

Ray DiPasquale: I would suggest there'd be approximately half of the development would be created. The plan on your right shows the upper portion of the project as being Phase 1 and what we would do under the first phase is, actually, the

first step would be to install the water and sewer service mains and that would come up the highway from the center of Lolo and approach the site in that manner. Then the infrastructure would be in place for the entire project around the loop road and the main loop roads and then the roadways would be paved and that would be the support structure for the first phase of the development. The sidewalks, roadways, both sides of the roads, everything that you see on those County roadway improvements specifications would be installed under that very first phase, that would be the first thing to go in place, along with the interpretive center and the 20 foot wide dedicated pedestrian walkway.

Commissioner Carey: It looks like it's going to be a fairly expensive project because there isn't much of a shoulder now.

Ray DiPasquale: To characterize it as a project where the developer is going to be lining his pockets is really a misnomer. Mr. Doran has struggled, I know he has struggled with this project regarding the water and sewer service extensions. I personally believe that it's a real asset to the community to have that water and sewer service down the highway and that's his, that was his decision to make but it was not necessarily a financially pleasing one.

Chairman Evans: I think what you were trying to get at was the walkways or the safety on the highway, was it not?

Commissioner Carey: Right.

Ray DiPasquale: Oh, the issue we discussed before is, if I could maybe put up a different board. The opportunity exists, just to orient you, north is up on this exhibit, along the lower third of the board is Highway 12 running left to right, Highway 93 running up and down on the board and the center of Lolo, Cap de Ville area and the subject property on the left hand side of the board. The properties directly adjacent to us are owned by Marge Zaveta, this lighter path area, the lighter portion of the board, is generally an access way or an easement or perhaps the old base of the roadway that is just outside of the corral area that Marge uses to house her horses, so it's just outside of that fenced area at the base of the steep slope. This entire area is the steep slope section that doesn't have any available, is the No Build Zone. There is a large portion of our open space to the northeast quadrant here that is fairly flat in nature, not the 25% slopes where we were planning on installing the interpretative center. The walkway that could traverse the entire tract would come out on our eastern edge at approximately the same location as that old roadway bed comes across Marge's property and could run along the base of the slope to provide an access way over to eventually the Holt Ranch and in speaking with Bill and Ramona Holt, they would be amenable to actually extending that walkway to a crosswalk location that, unfortunately on this aerial, it's a little bit dated, would provide access to Traveler's Rest. There is in fact a pedestrian bike path along the south side of Highway 12 just adjacent to the Traveler's Rest property. That was just a suggestion on our part, something that we would pursue in order to perhaps consider the projection and continuation of the trail.

Chairman Evans: I happened to run into the bus provider for the school kids today at noon and I asked him if there is any reason from his perspective that he couldn't provide busing for the kids to Lolo School. He said no. If the school wanted him to do it, he could in all likelihood provide the travel for those kids to and from school, but I understand that it is closer than the school's policy and they might not have the ability to pay for it. But the capability for the buses to transport the kids is there. One thing we could do for you folks is we could ask the State to do a speed study on that highway. But I want you to know that is double-edged sword, because the 85th percentile rule is that they set the traffic speeds at the speed that 85% of the folks travel and so if 85% travel 80 miles an hour, they could up it instead of down it and we've had that experience. So, we could ask for that if you want and perhaps they would find that 85% of the people go 50 miles an hour. You'd know better than I do whether that's likely. I would also tell you that the MDT is concerned about the traffic in Lolo. Loran Frazier asked a week or so ago for a meeting with the Commissioners, I think we have one scheduled in about two weeks when all the Commissioners can be there at one time and he could meet with us. So, all of our meetings are scheduled and are public and you're welcome to come and hear what we discuss and give your input, because they too are concerned about the highway.

Ray DiPasquale: Mr. Doran actually approached Beach Transportation to provide private transportation to the school from the subdivision at the expense of the Homeowners Association, it would be included within all the Homeowner Association fees. My understanding is that was not acceptable to the school, but it's on the table.

Dennis Doran: Hi, I'm Dennis Doran. The question, Beach's first approach was to get the school to pay for it, to try to promote busing, of course, increasing the use of Beach. There is a new superintendent there which came from Target Range School, that's where my kids go to, so hopefully he'll have a different understanding. I'm just as concerned about safety there as the residents who live on the highway, so I'm looking hopeful that we can get a private contract, should hopefully, we get the amount of kids there. I think everyone's been surprised about using statistics on how many children actually show up in these new subdivisions and it's always been about 40%-50% of the actual projection, just the nature of western demographics. Thanks.

Chairman Evans: One last one, Marge. The hearing has been closed.

Marge Zaveta: Okay. Well, just in regard to the pathway. I certainly have talked with the Historical Preservation about the pathway that runs through there. Where that goes is right along where the upper ditch goes as well, so I don't think it's an appropriate place for kids to be walking to school back and forth. And I don't want it through my property in terms of public access at this point. I'm certainly willing to preserve but not an appropriate spot along an irrigation ditch for kids to be walking to school. Thank you.

Commissioner Carey: Well, the developer's representative offered to modify several of the conditions that the Planning Board put in place at the start of this public hearing and I wonder if Monte was able to get that down so we can act on it today.

Monte Sipe: I'm not clear on Conditions 8 and 9 in regard to irrigation so I'll skip that just briefly and go to the ones that I am fairly clear on. The next one would be number 3, the Planning Board recommended condition for the creation of two additional accesses to the west and the developer agreed to install one additional access at the location of Lot 4, which would be an extension of Cassidy Trail so they would have two connections, one approximately at the quarter and then the three-quarter section of the property to provide access to the west. I believe that would make sense. Three accesses to the

west, I don't think it really necessary, and I don't know if anybody from public works would be here to comment on that or not, but I think two would be substantially adequate for that.

Commissioner Carey: Well, I'm concerned we get the language right here.

Monte Sipe: Do you want me to propose some. I guess what it would be, would be, "One additional 60 foot wide public access and utility easement be provided on the western edge of the property in the approximate location of Lot 4 to extend Cassidy Trail to the western boundary of the property. As a result of this, Lot 4 will have to be relocated to the northwest to a position behind Lot 5."

Commissioner Carey: That addresses the Condition 3 from the Planning Board. How about 4. They offered to modify the façade to the south.

Monte Sipe: The Planning Board recommended combination of lots. The developer was not in agreement with the combination of the lots. I believe they stated that they could position the structures or the homes so that they would front onto the highway with rear-loading garages with modification to the lot lines to accommodate that. I think there needs to be a motion. I don't know what the intentions of the Commissioners are in regard to that recommendation.

Commissioner Carey: That would be something I'm willing to accept, we just need some wording that works.

Monte Sipe: I would say that, "Lots 1, 94, 42 and 41 shall be modified to require development of the lots to front or face towards Highway 12 and that the garages be placed on the side or rear of the house, subject to review and approval by OPG, prior to final plat approval." Excuse me, "and that the covenants shall be modified to require development of the lots facing or fronting towards Highway 12." Basically an amendment to the covenants to require that stipulation.

Commissioner Carey: Okay, thank you. Number 7, it says, "The developer shall initiate an RSID," and I guess this goes back to when, is there any way of knowing when that RSID will be initiated.

Monte Sipe: They need to petition, it would be my understanding.

Ray DiPasquale: I'm not really sure on the process of initiating it, but since we are going to do quite a few improvements along the highway right-of-way, then should we use some of that as the trail grade, we would want to do that construction while we had the machinery in the ditch. I think we'd want to do it right there probably somehow. I was doing some calculations on the costs, so I think it would be something very good for the community there for kids that did want to ride to school or walk to school, so probably while we did the improvements, so, within 30 days.

Chairman Evans: I need to understand what you are saying. Are you saying that on your own property you would do something for an SID and you would include other areas and people would have the right to protest outside this property.

Ray DiPasquale: The improvements will be constructed along the frontage in accordance with the Primary Travel Corridor setback which includes the paved bike/walkway along our entire frontage. Between the frontage and the intersection of 93 and 12, we would act to initially, immediately initiate the RSID application process and quite frankly we're 95 out of 96 or 97 units on that RSID, so it is primarily this developer, and then allow for the opposition of that.

Commissioner Carey: This is in conjunction with your hooking up to the sewer, right.

Ray DiPasquale: Correct.

Colleen Dowdall: Part of that would depend upon the workload at Public Works to be able to create the RSID and so there are some factors that would be present so, this was a recommendation from Planning Board for this condition and it's a tough condition for us to impose because it is, creating the RSID really is your responsibility. The County's responsibility, initiating it is simply doing the paperwork ahead of time. So, it's not a perfect mechanism and I wish we had another one for funding things like this.

Commissioner Carey: We have a matter of the first condition that the Planning Board has recommended or attempted to recommend, I guess, about taking a look at consulting and maybe flying over the property and so on. My sense is, is that's really not very practical and probably wouldn't prove much of anything. I have a sense that the trails in area kind of moved around based on how wide the creek was and so on. I just wondered if the historic folks would want to comment on the developer's proposal to put in, they're proposing to put an easement kind of above ground a little bit.

Suzanne Julin: Suzanne Julin, Historic Preservation Office. I think that the developers have agreed that whatever that study would show, they're willing to go ahead with the proposed mitigation, so we can kind of jump ahead and do that. I do have one concern and that's about the easement going to a State entity as you stated. If a State entity isn't available to take on that easement, I'd like to suggest that a Federal entity could be considered, so one or the other.

Colleen Dowdall: I think that's what the condition states. I think the issue, however, is the condition as it is formulated by OPG and recommended by the historic folks, requires that the developer do these over flights and then the part that we really struggled with is what happens at the end of those. I think what Bill is suggesting is that really what we think will happen is that we'll still have the trail in the same place and that it would be an interpretive trail. So why go through this process at the developer's expense if he's already willing to provide what would be at the end anyway.

Suzanne Julin: I think it depends on how you're interpreting your own language in terms of affecting or destroying historic or cultural features. The only way to know, even with any degree of insurance, what cultural features are on the property is to do a culture resource survey, and that doesn't involve just the location of the trail, but it also involves any artifacts that might be beside the trail. You also have to consider that part of the historic features are the landscape and the viewshed and I think that the mitigation, the developer proposing certainly takes that into account. But that is a very thorny issue. If you do the cultural resource survey, you're going to have to have some planning in place about what you do if historic features are identified. Are you going to, what decisions will you make about how they're affected.

Ray DiPasquale: What we would like to amend, actually, or address, comments 8 and 9 from the original staff recommended conditions of subdivision approval. After speaking with the developer and hearing the evidence that Marge Zaveta has put on place, we will provide for the 20 foot easement for the irrigation connection to provide water to her property.

Dennis Doran: I'm not sure if it will take the current route at the base of that hill, but it will be delivered at the point of diversion that it currently states, or currently sits at.

Commissioner Carey: So then we can modify Condition 8 to end basically at, "The developer shall provide a 20 foot wide irrigation ditch easement for the existing ditch."

Dennis Doran: Correct.

Commissioner Carey: We're striking the rest of that.

Ray DiPasquale: But it may not follow the current alignment of the ditch.

Chairman Evans: We understand that.

Colleen Dowdall: We could say, "The developer shall provide a 20 foot wide irrigation ditch easement for the existing water right."

Ray DiPasquale: To the adjacent owner.

Commissioner Carey: Okay, that's probably better.

Chairman Evans: What do you recommend Colleen?

Colleen Dowdall: Just what I said.

Ray DiPasquale: I think adjacent, we need to say, the water rights specific to this property.

Colleen Dowdall: It's for the existing water right that has the right to use the ditch. I think then our next condition requires that the water right be removed for this property.

Ray DiPasquale: That's correct.

Commissioner Carey: And that stands as written, number 9. Well, this is a tough one because we're not lawmakers and we're not judges, we look at State law, we're advised on State law and we cannot basically in, it would be imprudent of us, I think, to ignore the advice we're getting from our Public Works people. They'll telling us that we can add this number of exists and entrances and so on. I personally think it's crucial to get the pedestrian bike path done as soon as possible. It would be nice if the developer would come in with three or four lots and call it good, but that doesn't make any business sense and he could have come in with a lot more and legally I don't think we'd have been able to deny it. So I think this is going to be as good as it gets for this particular subdivision. I was glad that one of the public mentioned that the Commissioners turned down a proposal in our Development Park. The reason we could do that is because we own it. And one of the reason we can't, kind of what else goes places is that we don't own it. It might be a really good exercise to take a look at who owns what properties heading up Highway 12 and take a look at what we can be proactive on, because we are reactive, and sometimes we'll get developers who really want to max things out and sometimes we can't do a darn thing about it. This one chose not to and he's basically modified his proposals in order to accommodate what he heard at some of these hearing and so on. So, with that, I go ahead and move that we, that the Lolo Creek Trails Subdivision, Phases I and II, be approved, based on the findings of fact in staff report and subject to the amended conditions in the staff report and the amended conditions suggested by the Planning Board. I think we've got wording that addresses those.

Colleen Dowdall: Right, we would exclude, of the Planning Board's, number 1 that staff and OPG endeavor to gather information and replace that with either 1 or 2 of the staff's recommended conditions, or both, that the developer provide a cultural resource survey, on Page 6 of the Request for Commission Action, so the Board has to decide if they want to impose those conditions. And I also want to request that your motion include, based on findings of facts, not just in the staff report, but from testimony given at the Planning Board and at this hearing.

Commissioner Carey: Okay, I would include that.

Chairman Evans: Are we deleting the one requiring infrared remote sensing.

Commissioner Carey: Right. Number 1 is deleted and then, striking the first phrase, "If significant resources are identified," we'll basically say, "The developer shall dedicate a 20 foot non-motorized public access easement."

Colleen Dowdall: And then #3 of the Planning Board, you're revising to put one instead of two and then #4 doesn't require the combination of lots but does require the covenants be modified to require that the homes face Highway 12.

Commissioner Carey: Correct.

Chairman Evans: The full context of your motion. I'll second it. Any discussion. I have some things I'd like to say so you'll understand how I'm going to vote and why. We have the responsibility to do what the law says to do in cases like this and I'm going to ask Colleen to tell you what the law says in regards to how we're to decide on issues that are brought to us by developers. Would you repeat that for me Colleen? The part that's pertinent to about developers getting the benefit of the doubt or us falling off on their side if there's questions.



Colleen Dowdall: There are several or at least a couple references in Montana Statutes that require that the Commissioners consider the expressed desires of the developer, but as a summary of Montana law, when a subdivision comes before the Commissioners they evaluate it based upon the review criteria, some of which Myra Shults mentioned in her presentation, and then our Subdivision Regulations have defined how we judge, for instance, what the public health and safety is or how we judge protection of the natural environment or historic and natural resources. Once we've established those through regulation, if the applicant meets our regulations, it is difficult to make findings of fact and conclusions of law that support a decision other than approval.

Chairman Evans: Thank you Colleen. I'd like to remind you that we had a subdivision brought before us a year or two ago and they met most of the rules, they did want some changes, and the Commission turned it down. We were sued and we lost. The law does not allow us to be arbitrary and capricious and those are subjective words, but I feel that the developers have met every requirement, they haven't asked for single variance and I don't know how, in good conscience, I could vote no and put the County at risk of liability for a lawsuit. So, I'm going to support your motion and is there any other discussion. All those in favor say Aye.

Commissioner Carey: Aye.

Chairman Evans: Aye. The motion carries.

#### **Lolo Creek Trails Subdivision Conditions of Approval:**

##### **Roads**

1. A school bus pullout shall be installed within the subdivision. Plans for the location and design of the pullout shall be reviewed and approved by Missoula County Public Works, the appropriate school district and the provider of bus service to the Missoula County High School District, prior to final plat approval. *Subdivision Regulations Article 3-2(8)(C) and OPG recommendation.*

##### **Primary Travel Corridor**

2. The developer shall install the landscaping, in accordance with the specifications outlined in the submitted Primary Travel Corridor plan, and a system for watering, prior to final plat approval of Phase I. Additionally, the homeowners covenants shall be amended to require maintenance and watering of the Primary Travel Corridor landscaping. *Subdivision Regulations Article 3-14(3) and OPG recommendation.*

##### **Driveways**

3. The covenants shall be modified to include a requirement for each lot to have two 20 foot deep off-street parking spaces located outside of the public access easement, subject to review and approval by OPG, prior to final plat approval. *Subdivision Regulations Article 3-2(10)(B) and OPG recommendation.*

##### **Fire Protection**

4. The covenants shall be modified to require address signs that are clearly visible from the street and are of reflective material or well illuminated, subject to review and approval by the Missoula Rural Fire District, prior to final plat approval. *Missoula Rural Fire District recommendation.*

##### **Hillside**

5. The developer shall provide a detailed slope category map to determine the exact location of slopes greater than 25%. The areas determined to be greater than 25% slope shall be labeled as No Build Zones, the covenants shall be amended to define the specific No Build Zones and restrict disturbance in those locations. *Subdivision Regulations Article 3-15.*

##### **Weeds**

6. Article VI, Section 26 of the covenants shall be revised to require that the properties be maintained in accordance with Montana County Weed Control Act and the Missoula County Noxious Weed Management Plan and require lot owners to revegetate ground disturbances with beneficial species at the first appropriate opportunity after ground disturbance ceases. *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed Board recommendation.*
7. A Revegetation Plan for disturbed sites shall be reviewed and approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed Board recommendation.*

##### **Irrigation Ditch**

8. The developer shall provide a 20 foot wide irrigation ditch easement for the adjacent existing ditch water rights. *MCA 76-3-504(k) and OPG recommendation.*
9. In accordance with MCA 76-3-504(j)(ii), the subdivider shall have the water rights removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions. *Subdivision Regulations Article 4-1(13), MCA 76-3-504(j) and OPG recommendation.*

##### **Areas of Riparian Resource**

10. The covenants shall be amended to incorporate the Riparian Resource Management Plan and the Riparian Area Plan map. *Subdivision Regulations Article 3-13(3) and OPG recommendation.*

##### **Wildlife**

11. An additional "Living with Wildlife" section shall be added to the covenants incorporating the following:

Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets and properly storing garbage, pet food, livestock feed and other



potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, bears, mountain lions, wolves, skunks and raccoons. Contact the Montana Fish, Wildlife and Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife."

In addition to the Covenant sections on Garbage (VI.16), Animals and Pets (VI.17) and Planting (VI.25), the following covenants should help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- a. Do not feed wildlife or offer supplements (such as salt blocks), attractants or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against State law (MCA 87-3-130) to provide supplemental feed attractants if it results in a "concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners should be aware that deer might occasionally attract mountain lions to the area.
- b. Gardens can attract wildlife. Keep the produce picked because rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
- c. Fruit trees or orchards can attract wildlife such as deer and bears. Keep ripe fruit picked and do not allow rotten fruit to collect under trees.
- d. Birdseed is an attractant to bears. Consider not using bird feeders in this area between the months of April through October. If used, bird feeders must: a) be suspended a minimum of 20 feet above ground level; b) be at least 4 feet from any support poles or points; and c) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds. *Subdivision Regulations Article 3-13, Fish, Wildlife and Parks and OPG recommendation.*

12. The covenants shall be amended to incorporate the following:

Section IV.1-5 of the covenants shall be revised to specify that only non-motorized use of Common Areas A and F be allowed and that no above-ground improvements (maintenance buildings, play equipment, planting non-native vegetation, etc.) be allowed in these areas.

Section VI.16 (Garbage) be changed to delete the reference to underground receptacles.

Section VI.17 (Animals and Pets) be amended by adding the following after the sentence, "Such animals shall not ... nor to wildlife." "Under current State law it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124)."

Section VI.17 (Animals and Pets) be amended by changing/adding the following: "Pet food should be kept stored indoors or kennel areas only. Consider only feeding pets indoors or only within kennels and do not leave food out overnight, so that wild animals do not learn to associate food with your home."

Section VI.21 (Nuisances) be amended to read as follows: "Use of an outdoor barbecue shall not be considered a nuisance; however, permanent outdoor grills are not allowed and all portable barbecue grills must be stored indoors when not in use, in order to reduce the attraction of wildlife such as bears to the area." *Subdivision Regulations Article 3-13, Fish, Wildlife and Parks and OPG recommendation.*

#### Covenants

13. Article VII, Section 4 of the covenants shall include the following: The sections regarding driveways, weed control, living with wildlife, garbage, animals and pets, planting, barbecue grills, common area and drainage facilities maintenance, No Build Zones, Primary Travel Corridor and Riparian Resource Management Plan cannot be changed without the concurrence of the governing body. *Missoula County Zoning Regulations 8.13(D)(5) and OPG recommendation.*

#### Health

14. The covenants shall advise property owners that EPA has designated Missoula County as a zone having a high radon potential and that all new construction incorporate passive radon mitigation systems. *Subdivision Regulations Article 3-1(2) and City-County Health Department recommendation.*

#### Phasing

15. The Phasing Plan shall be revised and submitted to OPG as follows: The final plat for Phase I (Lots 9-34, 48-73) shall be submitted for final plat approval by May 1, 2005. Phase II (Lots 1-8, 35-47 and 74-94) shall be submitted for final plat approval by July 31, 2006. *Subdivision Regulations Article 4-1(17) and OPG recommendation.*
16. All detention areas that are identified in Common Areas B, D and E shall have slopes no steeper than eight to one (8:1) pitch going down into them. *Planning Board recommendation.*
17. One additional 60 foot wide public access and utility easement shall be provided on the western edge of the property in the approximate location of Lot 4 to extend Cassidy Trail to the western boundary of the property. As a result of this, Lot 4 will have to be relocated to the northwest to a position behind Lot 5. *Planning Board and Board of County Commissioners recommendation.*

18. The covenants shall be modified to require development of Lots 1, 41, 42 and 94 to front or face towards Highway 12 and that the garages be placed on the side or rear of the house, subject to review and approval by OPG, prior to final plat approval. *Board of County Commissioners recommendation.*
19. The covenants shall be modified to specify that Common Area A will be closed to human activity and uses during the time period that this Common Area is used by wintering wildlife. The specified timeframe shall be defined by OPG after consultation with Montana Fish, Wildlife and Parks. *Planning Board recommendation.*
20. The developer shall initiate an RSID for pedestrian/bicycle improvements on the north side of Highway 12 from the project site to Highway 93 South. *Planning Board recommendation.*
21. The developer shall dedicate a 20 foot non-motorized public access easement to a qualified entity of the State or Federal government in the approximate location of the "Lolo Trail." Significance of the trail and recognition of the various groups that used it historically should be interpreted through installation of signage. This condition is subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-1(9) and Historic Preservation Office recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 4:50 p.m.

**THURSDAY, JUNE 3, 2004**

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. In the afternoon, Commissioner Carey participated in a Hunger Awareness Day event held at the Albertsons Store on Russell Street.

Claims Lists – The Commissioners signed three (3) Claims Lists, dated June 2, 2004, with the following grand totals:

- 1) \$71,201.47;
- 2) \$29,845.75; and
- 3) \$1,617.84.

The Claims Lists were returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Agreement – The Commissioners signed one (1) Sanitary Sewer Grant Program Agreement for Full Assistance to Owner-Occupied Households Secured by Real Property, dated May 28, 2004 with Charles J. and Catherine Martin, 409 Montana Avenue, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. All sewer development fees and on-site connection costs and fees are as set forth therein.

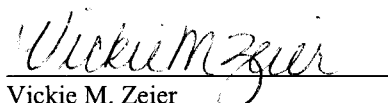
Agreement – Chairman Evans signed an Agreement, dated June 2, 2004 between the Missoula County Airport Industrial District and Missoula Electric Cooperative to install, operate and maintain an electric service line within Phase 3B, Missoula Development Park – West Harrier extension. The total amount shall not exceed \$24,682.00. The term will be July 1, 2003 through June 30, 2004. All other terms and conditions are set forth therein. The document was returned to Barb Martens in the Projects Office for further handling.

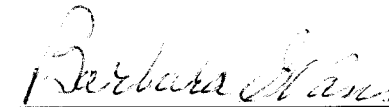
Agreement – Chairman Evans signed a Memorandum of Agreement, dated May 25, 2004 between the Missoula County Park Board (the "Board") and the Seeley Lake Lions Club for assistance with park development. The Board agrees to provide up to \$1,000 in matching funds from the Capital Matching Fund Program (Spring FY04), and must be spent by May 30, 2006. The document was returned to Lisa Moisey, County Parks Coordinator, for further signatures and handling.

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

**FRIDAY, JUNE 4, 2004**

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

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, JUNE 7, 2004**

The Board of County Commissioners met in regular session; all three members were present in the forenoon. Commissioner Evans was out of the office all afternoon. In the evening, the Commissioners and County staff members conducted a Public Discussion meeting regarding the proposed Code Enforcement Program for Missoula County; the meeting was held at the Lolo Community Center.

Claims Lists – The Commissioners signed three (3) Claims Lists, dated June 3, 2004, with the following grand totals:

- 1) \$30,604.84;
- 2) \$17,235.30; and
- 3) \$3,925.47.

The Claims Lists were returned to the Accounting Department.

Claims Lists – The Commissioners signed three (3) Claims Lists, dated June 4, 2004, with the following grand totals:

- 1) \$18,187.83;
- 2) \$3,024.81; and
- 3) \$34,401.01.

The Claims Lists were returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 7, 2004, with a grand total of \$58,095.14. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Mary Johnson, Missoula, as Principal for accounting Warrant #39680, issued April 30, 2004 on the Missoula County 2273 Fund in the amount of \$96.00 (for work shirts), which cannot be found.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 11 – CY2004 - Pay Date: May 28, 2004. Total Missoula County Payroll: \$959,322.69. The Transmittal Sheet was returned to the Auditor's Office.

Resolution No. 2004-080 – The Commissioners signed Resolution No. 2004-080, dated June 7, 2004 a resolution to rezone the property located at 4815 Mullan Road one mile west of Reserve Street, containing approximately 62 acres, from C-RR1 (Residential) to the JTL-Allen Special District, subject to conditions. The property is described as the E½ SE¼ and the part of the SE¼ NE¼ lying south of the Missoula-Frenchtown lower Road (Mullan Road) in Section 13, T 13 N, R 20 W, PMM, except that parcel conveyed in Book 146 of Deeds at page 581. (Note: The BCC approved the rezoning on October 16, 2001 and adopted Resolution No. 2001-094 stating its intention to rezone. There were no protests filed. For a variety of reasons, the resolution to rezone was not completed.)

Resolution No. 2004-081 – The Commissioners signed Resolution No. 2004-081, dated June 7, 2004 a resolution to annex to the Missoula Rural Fire District an area of land described as: "Lots 1 through 9 of Evans Ridge, recorded in Book 22 of Plats 36."

**TUESDAY, JUNE 8, 2004**

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

Claims List – The Commissioners signed the Claims List, dated June 7, 2004, with a grand total of \$14,874.84. The Claims List was returned to the Accounting Department.

**ADMINISTRATIVE MEETING**

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

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-022 for the Health Department, reflecting \$50.00 for a needed object code.

Contract – The Commissioners signed a Contract (#04-07-5-31-013-0) between the Montana Department of Public Health and Human Services ("DPHHS") and the Missoula City-County Health Department for the purpose of decreasing the incidence of youth suicide in Missoula County through the Youth Suicide Prevention project. The total amount shall not exceed \$10,000. The term will be June 7, 2004 through June 15, 2005. All other terms and conditions are set forth therein. The document was returned to the Health Department for further signatures and handling.

Memorandum – The Commissioners signed a Memorandum of Understanding, dated June 3, 2004 between the Missoula County Weed Control District ("WCD") and the University of Montana ("UofM") Facilities Services for the construction and use of Herbicide/Vehicle Storage Bays on the UofM Campus. The WCD will provide grant funding in the amount of \$6,437.00 towards the construction of the Bays; the total cost of the project is estimated at \$19,311.00. All other terms and conditions are set forth therein.

Change Orders – Chairman Evans signed two (2) Change Orders with A&E Architects for the Windows & Stair Restoration project at the Missoula County Courthouse, as follows: 1) Change Order #1 is to repair the damaged sidewalk by the south entrance, in the amount of \$1,355.00; and 2) Change Order #2 is to put a metal plate over a hole that exists under the steps by the south entrance, in the amount of \$425.00. The Substantial Completion Date is June 17, 2004. The documents were returned to Larry Farnes in Facilities Management for further signatures and handling.

Resolution No. 2004-082 – Chairman Evans signed Resolution No. 2004-082 (Superseding Rural Special Improvement District ("RSID") #8472, Resolution No. 2002-015), dated June 8, 2004 creating RSID No. 8484 for the paving of Spring Hill Road, replacement of creek crossing culvert, and installation of a school bus turnout and signage, for total estimated costs of \$168,000.00. All other terms and conditions are set forth therein. County Clerk and Recorder Vickie M. Zeier signed a Certificate as to Resolution and Adopting Vote. The document was returned to Jesse Sattley, RSID Coordinator, for further handling.

Change Order – The Commissioners approved a Change Order with contractor Sirius Construction, Inc. for the Fourth Floor Restoration project at the Missoula County Courthouse. The Change Order addresses the addition of a west window; capping of hot water heating lines; deletion of lock cylinders; addition of hot water heater; deletion of door access system; saw cutting of a beam; and addition of fire rated glass, in the amount of \$1,667.54. The Substantial Completion Date is October 29, 2004. The document was returned to Larry Farnes in Facilities Management for further signatures and handling.

Agreement – Chairman Evans signed a Memorandum of Agreement, dated May 25, 2004 between the Missoula County Park Board (the “Board”) and Shelby Park (Grasshopper Park) for assistance with park development. The Board agrees to provide up to \$1,000 in matching funds from the Capital Matching Fund Program (Spring FY04), and must be spent by May 30, 2006. The document was returned to Lisa Moisey, County Parks Coordinator, for further signatures and handling.

Other items included:

- 1) A discussion was held regarding a grievance issue with a Missoula County employee and the Sheriff’s Department.

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

### WEDNESDAY, JUNE 9, 2004

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Evans attended a Public Meeting on the Revised Proposed Plan for the Milltown Reservoir Cleanup hosted by the EPA and held at the Bonner School gym.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

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

Amendment – The Commissioners signed one (1) Sanitary Sewer Grant Program Amendment to Agreement for Assistance to Owner-Occupied Households Secured by Real Property, dated June 3, 2004 with Murvin B. and Joyce M. Rickel, 28 Canyon View Drive, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. Amended is Section IV.A.2. of the Agreement as follows: “On-site connection costs and fees - \$1,607.50 paid to Gwynn Excavation. All other provisions stated in the original Agreement shall remain in full force and effect.

Closing Documents – Chairman Evans and Clerk and Recorder/Treasurer Vickie Zeier signed closing documents relating to Series 2004 Limited General Obligation Bonds in the amount of \$995,000 for the Ice Rink improvements at the Missoula County Fairgrounds, as follows: 1) Bond Purchase Agreement; 2) Officers’ Certificate; 3) Request and Authorization; 4) Affidavit as to Signatures of County Officers; 5) Certificate as to Organization of Missoula County, Montana; 6) County Clerk and Recorder/Treasurer’s Certificate and Receipt; 7) Certificate with Respect to Satisfaction of Condition Precedent for Issuance of Bonds; 8) Arbitrage and Rebate Certificate and Agreement; and 9) Addendum.

Agreement – Chairman Evans signed a Paying Agency and Registrar Agreement, dated June 10, 2004 between Missoula County and U.S. Bank National Association for Series 2004 Limited General Obligation Bonds, pursuant to Resolution No. 2004-077 (dated May 26, 2004) for Ice Rink improvements at the Missoula County Fairgrounds (see previous journal entry.) All other terms and conditions are set forth therein.

Letter – The Commissioners reviewed and approved a letter received from the Missoula Art Museum (“MAM”), dated May 20, 2004, regarding the receipt by MAM of a \$15,000 grant from the National Park Service to create an interpretive program based on the historic E.S. Paxson murals installed in the Courthouse. MAM would like to move two murals to the Museum in July for photographic purposes; the murals will be reinstalled after photos are taken.

Board Appointment – The Commissioners reviewed, approved and signed a letter received from James D. McDonald, Chairman of the Target Range Sewer and Water District (the “District”), dated June 6, 2004, in which he states the following: 1) the Board of Directors of the District has appointed Richard Gilfillan to fill an open position as director on the board for a four-year term; 2) the District has accepted the resignation of Wally Sept as a director of the board; and 3) the District wishes to submit Ron Pales as replacement to finish the remaining two years of Mr. Sept’s term. The letter was returned to Mr. McDonald.

Tax Abatement Requests – At the Clerk & Recorder’s Departmental Meeting with Vickie Zeier, held on June 9, 2004 the Commissioners approved requests and/or letters regarding the following:

- 1) To deny a request from Northstar Air Express, Missoula, to waive penalty and interest for 2<sup>nd</sup> half 2003 real estate tax bill for Taxpayer ID #3080002;
- 2) To deny a request from Doug Hadnot, Lolo, to waive penalty and interest for 2<sup>nd</sup> half 2003 real estate tax bills paid on June 4, 2004;
- 3) To approve a request from Bennett Law Office, P.C., Missoula, to refund taxes paid in error on Title #E799762;
- 4) To approve a request from Fran O’Connell, Missoula, to refund taxes paid in error on Title #E952415;
- 5) To approve a request from W.A. Gallagher, Helena, to refund penalty and interest paid for Taxpayer ID #90083800; and
- 6) To approve a request from Gailyn Taylor, Missoula, to refund taxes paid on Title #E442328.

**PUBLIC MEETING – June 9, 2004**

The Public Meeting was called to order at 1:30 p.m. by Commissioner Barbara Evans. Also present were Commissioner Bill Carey, Commissioner Jean Curtiss, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall and County Public Works Assistant Director Chuck Wright.

**Pledge of Allegiance****Public Comment**

None

**Routine Administrative Actions**

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$283,019.30. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Hearing (Certificate of Survey): Stratton Family Transfer (Postponed from June 2, 2004)**

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 55-B of COS 4865, located in the southeast one-quarter of Section 17, Township 14 North, Range 20 West.

Richard D. Stratton has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 10.80 acres in size located near Missoula, Montana. Richard proposes to create one approximately five acre parcel for transfer to his wife, Shelly Carol Stratton, for residential purposes and keep the remaining approximately 5.80 acre parcel for residential purposes as well.

The history of the parcel is as follows: In 1996, Edward W. Bouma entered into a written agreement for the sale of Tracts 55 and 57 of COS 1925, to Adam V. and Helen A. Holzer. Adam and Helen filed COS 4865 in October, 1998, with the intent to qualify for the family transfer exemption. Tract 55-B was transferred to Darla J. Bartholomew, their daughter. Darla filed a quitclaim deed in November, 1998, deeding Tract 55-B to Daryl M. Holzer. In August, 2003, an agreement was entered into by Daryl Holzer to sell the tract of land to Richard D. Stratton.

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

The public hearing on this request was held on June 2, 2004, however, only two Commissioners were present. The applicant and Commissioners agreed to delay the decision one week to avoid a tie vote, which would have effectively denied the petition. Mr. Stratton testified that the property would be sold and the money used to build a house for he and his wife on the remainder parcel.

Gilbert Larson stated that this is a request from Rick Stratton to do a family transfer to his wife. He has thought a lot about this, the reasons to do a family transfer rather than go through subdivision review. The cost to do a Certificate of Survey is between \$2,500 and \$3,000 and takes about 4 months to complete. The review process with the Department of Environmental Quality is the same for both Certificates of Survey and subdivisions. There are also similar survey requirements. A minor 2-lot subdivision would cost between \$7,000 and \$12,000. Instead of an affidavit, a preliminary plat and supplemental data sheet are prepared and later a separate final plat is required. A 40 to 50 page submittal is required instead of a short affidavit. A topographical survey of the entire lot is required which costs about \$1,500. After the packet is prepared, it is certified as complete with OPG. That process usually takes a couple of weeks. To go through the subdivision process takes an additional 4 months on top of what a COS would have been. After the certification, agency review is required. Approximately 50 copies of the packet need to be printed at \$15 to \$20 each, for an additional cost of \$750. It takes significant effort to complete the agency review process. After agency review, the packet is submitted for review by OPG. There are several required meetings, including a pre-application meeting, neighborhood meetings and hearing before the governing bodies. Conditions of Approval are recommended, then the final plat can be filed. On one subdivision, he has spent over 20 hours just obtaining the necessary signatures on a final plat, which is not atypical of a subdivision proposal. Twenty hours spent just collecting signatures on a final plat is about half the time required to do a Certificate of Survey. One of the biggest differences between a Certificate of Survey and a final plat is that Conditions of Approval can be set. This particular area has about 300 feet of frontage on a gravel road that does not meet subdivision standards. It would cost about \$75 per foot to improve the road to meet standards, with a potential cost of \$22,500 to pave the road. A variance can be requested but it may or may not be granted. The applicants may end up with a subdivision they cannot afford to file. There is an expense of \$7,000 to \$12,000 before they even know if it can be filed; it could be denied. It is only a couple hundred dollars with a Certificate of Survey to get to the point of whether they know it can be filed or not. Those are some of the key reasons they advise clients to consider a Certificate of Survey rather than a subdivision; the time, the expense, the risk factor of the conditions that might be imposed. In each case, whether or not this meets the conditions of law are looked at. As he reads the law, it appears there are three tasks it must pass. The first is that it must be outside a platted area. The entire area of Fire Bucket Loop has been created through Certificate of Survey, it is not a platted area. It has not gone through subdivision review, there are no paved roads or curbs or street lights, etc. This is the norm for the area. No good would be done for the entire area by having this tiny corner of Fire Bucket Loop reviewed as a subdivision. The second test is whether it meets the criteria, a legitimate transfer to a family member. A transfer to a spouse may not be common but it is allowed by law. If a husband gives a tract of land to a spouse, the husband benefits also. It is their intent to use this exemption to be able to build their own home. It will increase the value of the land and allows them to build a home and live in the area, which is why they are requesting the transfer. The third and perhaps the most difficult criteria is that "the disposition of land should not evade the subdivision law." That is the one most struggled with. In his opinion, Rick Stratton is not evading the law at all. He has been very

forthright and honest. The transfer is bona fide, from him to his wife. She might hold the land for a year or two, but it is their intent to sell that tract and use the money to build her a home. There has been no evasion. They are trying to avoid the expense of doing a subdivision. As an example, if someone is evading a policeman, it creates a mental picture of someone who has done something wrong and is trying to keep away from a policeman. If they are avoiding the policeman, it does not create the same mental picture; for whatever reason they don't want to talk with a policeman, but not because they have done something wrong. That is the case today. Rick Stratton has not done anything wrong. He has been forthright and honest. He wants to transfer a piece of property to his wife and has not done anything that is not allowed under the law. If this were to go through subdivision, the expenses could be between \$30,000 and \$40,000 if all standards were implemented and no variances were granted. That is a huge risk for Mr. Stratton. About \$10,000 would be expended before he would even have an answer to what additional expenses would be required. Mr. Stratton is not a developer. It is respectfully requested the Commissioners approve this family transfer.

Chairman Evans opened the public hearing.

Rick Stratton stated he wanted to make a couple of clarifications. It is not for sure that he will sell the property and build a home; that is not an absolute. He and his wife also had discussed selling the property and paying off their student loans, or getting her master's degree. Also, if a lot is eventually sold, it would be the one in his name, not the one in Shelly's name. The division of land to the right of his property was done through a family transfer and he now has a lot for sale. The division of land to the left is doing the same thing and he knows of two others down the road that have done the same thing. He doesn't know why he is being singled out as evading subdivision review, it offends him. The problem is not him or the folks around him, the problem is the law, it is ambiguous and subject to interpretation. The law needs to be changed. What legitimizes a family transfer, holding the land for a year or two, but not six months. Perhaps such a clause needs to be included in the law so it can be enforced and the Board doesn't have to rule on these requests. He suspects the Board doesn't enjoy making these determinations, nor does he enjoy going through the process.

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

Commissioner Carey stated that it might be good if Mr. Stratton talks with Dick Haines, who has served in the State legislature and is running for the senate. Those are the people that write the laws, the Commissioners don't determine policy, they follow State statutes. For the past several years, legal counsel has instructed the Board to ask an applicant, on the record, whether or not this is an attempt to evade subdivision review, what their intention is for the property. Everyone is asked the same questions he was asked and now it would appear that others have not been as honest as he has. When he said he was going to subdivide his property and sell a parcel, as explained by the County attorneys, that is against the law. Gilbert makes some very persuasive arguments to the contrary.

Chairman Evans stated she does not like this process, she cannot read someone's mind. The law clearly gives Mr. Stratton the right to give a piece of land to his wife, once in the County, once in his lifetime. From her perspective, that is what he wants to do. Another factor to look at is whether he is a developer who is doing this routinely. That does not appear to be the case. He appears to be an honest man who wants to have a house for himself and his wife and who has the land to split to do so. She does not see evasion, she sees avoidance. She is willing to approve his request for a family transfer.

Commissioner Curtiss stated that Gilbert's testimony did both good and bad. The map shows a subdivision that was created illegally a long time ago which is why there are all these COS's in the area.

Mike Sehestedt stated an action was brought against the original developer in the mid-1980's and some relief was granted to the County. The land was split into 20 acre tracts and marketed as being available for additional division through family transfers. Many of those splits were done and there was no limitation to the number of divisions.

Commissioner Curtiss stated that many divisions were done without review and now Fire Bucket Loop is a very poor road, because it was not reviewed for proper access. A subdivision is expensive but there are many reasons the process should be done, proper access, connecting roads, sidewalks, etc. She sees this request as something the law does not allow.

Commissioner Carey asked what legal basis the Board could rely on to approve the family transfer. What should the Board tell the next person that wants to do the same thing.

Mike Sehestedt stated the purpose of the review is to determine whether or not the exemption is being used to evade, as opposed to avoid, subdivision review. The analogy of taxes can be used. Tax avoidance is a large industry and considered a noble effort; tax evasion is a criminal offense and considered to be despicable. The line between the two is difficult to draw and particularly hard in this case. The principal basis used is if there is some substantial reason for division of the property, other than creating two parcels, one to sell and one to use, for the benefit of the community. The Board must decide if an applicant is planning to use the exemption to create a "straw" transaction; creating a parcel, transferring it to a minor child's trust, then the trust sells the property with little real benefit to the child. There is no way to check the benefits from the proceeds of such a sale. A gift to a spouse is even more problematic in a traditional, intact marriage. Reasons for a transfer to a spouse could be they don't want to encumber the entire tract with a construction mortgage or the wife wants to own part of the property free and clear for her own sense of security. The net effect is the value of the community's property has been enhanced. This is a straight exposition that they are engaged in this activity jointly, whereby he is going to convey half of the property to her so she can sell it so the proceeds can be used mutually to build a house.

Rick Stratton stated there will be two 5 acre lots. If he was creating three or four lots, he could understand that he was evading subdivision. This is just 2 lots, one will go to his wife and one he will retain. Potentially, they will build a home. Everyone is saying they are going to build a home and sell it. He shared some ideas of what could happen, but it doesn't mean that is exactly what will happen. He is trying to be frank about the situation. If they do sell a piece of property, it would be the one in his name, not the one in Shelly's name. It will not be done this year, that is for sure. It might not be done in another year or two. He said they would potentially sell one of those lots and if they do, it will be the one in his name. Maybe he should have never said that. Right now, they live on Mullan Road which is going through a lot of changes. So is the Toookie Trek area. They are going to have a huge bill to pay for the Mullan sewer. There is a lot going on in his family life right now which he has not shared with the Commissioners.

Commissioner Carey asked what legal basis the Board has to approve this family transfer.

Colleen Dowdall stated that it is not legally significant which lot is sold, that wasn't an issue. The things the Board relies upon in determining whether there is an attempt to evade subdivision review are all the questions that are asked – what does the person do for a living, whether they have a history of using exemptions, what the history of the area is for exemptions and what the plans are for the property. It is the Board's judgment whether it is an attempt to evade subdivision review. Additional facts from Mr. Stratton have been presented this week that clarify he and his wife's plans. The Board must take those into consideration and determine whether this is an evasion or an avoidance.

Commissioner Carey stated that there is something in the law the Board could rely on to determine it is not an evasion, but rather avoiding an expensive and time consuming subdivision process.

Mike Sehestedt stated that the question of whether it is an evasion or an avoidance is ultimately a question of fact, which the Board would have to find on the particular circumstances and representations of each case.

Commissioner Curtiss stated that if Mrs. Stratton needed open heart surgery and he was going to divide the land and sell a lot to pay for the surgery, that would be legal, because that would easily be seen as a direct benefit to her.

Mike Sehestedt stated that if it is simply a way to divide property to increase the community's net worth, then it is probably an evasion. If other reasons are found, it could be characterized as avoidance.

Chairman Evans stated that the law clearly allows a family member to give a piece of land to another family member, once in their lifetime per county. The Board must decide if it is an evasion or avoidance of subdivision review. She could not see punishing Mr. Stratton for telling the truth.

Mike Sehestedt stated that no one is doing that, it would suggest that the Board is lied to on these requests fairly frequently.

Commissioner Carey stated he understands this process is new to Mr. Stratton but the Board hears subdivision proposals almost every week. It is in the public interest for land that is being subdivided to have some review, a reasonable look to determine potential danger. These regulations usually come into being because of some horror story when there were no regulations. In his case, he did not see this as evasion of subdivision review. Mr. Stratton is not a professional developer. He would be willing to find that in this particular case, he is not evading subdivision review, but reasonably trying to avoid unnecessary costs. He does not want this seen as sending a message to others however. This area is going to take a lot of work to get it where it will be livable in the long term. Fire Bucket Loop itself is a major problem.

Rick Stratton stated that is why he doesn't want to say for sure he will build a home on the property. He wants to see what happens with Toookie Trek and the other roads in the area. He wants to see what other kinds of homes are built around him and what kind of people live in those homes. It is too strong to say he will build a home, he and his wife are still discussing it. He would like to move his wife to the country. There is no greater gift to a stay-at-home spouse than a home. He does not know if they will ultimately build a home on this property, but would like to keep that as an option.

Commissioner Carey moved that the Board of County Commissioners approve the request by Richard D. Stratton to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Curtiss seconded the motion.

Commissioner Curtiss stated that Gilbert built a case today that these folks need to go through subdivision review but it is an expensive process. In an area like this when subdivision review is not used, it ends up with a bad road like Fire Bucket Loop. She hoped this isn't the way Gilbert gives advice to his clients. She is sorry Mr. Stratton took the brunt of trying to work through this ambiguous law. The Board is responsible for making the decision and they do find out that people aren't as truthful as they should be. She did appreciate Mr. Stratton's honesty.

The motion carried on a vote of 3-0.

Chairman Evans stated that Mr. Stratton would receive a letter confirming today's action. However, this has not been reviewed for access or other criteria. This is just permission to divide the property, it does not give Health Department approval, zoning compliance and no guarantee of access or anything else.

#### **Hearing (Certificate of Survey): Sardot Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer for that parcel described as Lot 1 of Section 6, Township 14 North, Range 22 West.

Aldo Sardot has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 26 acres in size located near Huson, Montana. Mr. Sardot proposes to create one approximately 10 acre parcel for transfer to his daughter, Tova Sardot, age 24, for residential purposes and keep the remaining approximately 16 acre parcel for residential purposes as well.

The history of the parcel is as follows: Ralph Ridenhour and Fred H. Mello filed a warranty deed in April, 1979, deeding this parcel to James A. Shaw. James Shaw filed a warranty deed in May, 1995, deeding the parcel to Stephen J. and Christine S. Edgar. The Edgars deeded the property to Ralph S. and Jeanne M. Greendale in August, 1995. The Greendales filed a warranty deed in November, 2003, deeding the property to Aldo Sardot.

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



Aldo Sardot stated that this is the family estate and he would like to give a piece of land to his daughter which she can use as she likes, perhaps to build a house for herself in the future.

Commissioner Curtiss asked if Mr. Sardot lived on this property.

Aldo Sardot stated he did not live on the property, he has a house in Missoula.

Commissioner Curtiss asked if there were any houses on the property.

Aldo Sardot stated there were no houses on the property.

Commissioner Curtiss asked if Mr. Sardot was in the developing business, buying and selling land.

Aldo Sardot stated he owns and manages a storage unit business.

Commissioner Curtiss asked if Mr. Sardot really intends to give this land to his daughter.

Aldo Sardot stated that was correct.

Colleen Dowdall asked if Mr. Sardot had presented a rezoning request to the Board before.

Aldo Sardot stated he did a rezoning off Expressway.

Colleen Dowdall asked if Mr. Sardot intended to keep the remainder parcel.

Aldo Sardot stated he did intend to keep the property.

Colleen Dowdall asked if his daughter intended to keep the other parcel.

Aldo Sardot stated that she better keep it.

Colleen Dowdall asked if Mr. Sardot had made any requests or had any pre-application meetings with the Planning Office regarding subdivision of this or neighboring property.

Aldo Sardot stated he spoke with Dale McCormick about giving this land to his daughter. Dale suggested using the family transfer process.

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

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

Chairman Evans stated that Mr. Sardot would receive a letter confirming today's action. However, this has not been reviewed for access or other criteria. This is just permission to divide the property, it does not give Health Department approval, zoning compliance and no guarantee of access or anything else.

#### **Hearing (Certificate of Survey): Christiansen Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract A of COS 2995 located in the east one-half of the northwest one-quarter of Section 18, Township 13 North, Range 16 West.

Ovie Daniel Christiansen has submitted a request to create three parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 20 acres in size located near Potomac, Montana. Mr. Christiansen proposes to create three parcels: one approximately 3.97 acre parcel for transfer to his nine-year-old son, Ovie Luke Christiansen; one approximately 3.97 acre parcel for transfer to his twelve-year-old daughter, Lea Nichole Christiansen; and one approximately 3.97 acre parcel for transfer to his father, Howard William Christiansen, all for residential purposes, and keep the remaining approximately 8.15 acre parcel for residential purposes as well. The remainder parcel was previously created by the use of a mortgage exemption in August of 2000. This would give it a new property description but would not change the fact that is a legally created parcel. Drafts of the trusts to hold this property on behalf of his children are included in the request.

The history of the parcel is as follows: In April, 1969, a notice of contract to purchase land was filed by Christina R. Long, George O. and Christina M. Toxel along with Howard E. and Joanne G. Long as Sellers entering into a written contract for the sale of the parcel to Evan P. and Barbara Ann Jordan. The warranty deed was filed April 12, 1969. Evan P. and Barbara Ann Jordan sold the property to Michael H. and Nancy C. Chandler in October, 1976. The Chandlers deeded the property to Allen R. and Evelyn L. Holbrook in October, 1977. The Holbrooks filed COS 2995 in 1984, creating Tract A to create a greater than 20 acre tract of land. In June, 1990, the Holbrooks filed a warranty deed deeding the property to Ovie Daniel and Sonya Marie Neal Christiansen. In November, 2002, Sonya Marie Neal Christiansen deeded the parcel to Ovie Daniel Christiansen.

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act except as listed below:

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Chairman Evans opened the public hearing.

Ovie Daniel Christiansen was present and came forward to answer any questions the Board may have.

Colleen Dowdall asked how long Mr. Christiansen had owned the property.

Ovie Christiansen stated he had owned the property since 1990.

Colleen Dowdall stated that recently his wife transferred her interest to him.

Ovie Christiansen stated that was correct, she has no interest in the property at this time.

Colleen Dowdall stated that he has held the property for over 10 years.

Ovie Christiansen stated that was correct.

Colleen Dowdall asked if he intended to sell any parcels on behalf of his children.

Ovie Christiansen stated that he had no intention to sell any property unless it was absolutely necessary.

Colleen Dowdall stated that the trusts need to be established before the transfers can take place.

Ovie Christiansen stated he understood that.

Colleen Dowdall asked if the property was going to be developed in any way.

Ovie Christiansen stated he might build houses someday. The children couldn't reside on the property for a number of years and the property is for their college years.

Colleen Dowdall asked if he had talked to anyone at the Planning Office about going through subdivision review.

Ovie Christiansen stated his understanding was there was an exemption for transferring property to family members.

Colleen Dowdall asked if Mr. Christiansen was attempting to evade subdivision review.

Ovie Christiansen stated he was not.

Commissioner Curtiss asked what Mr. Christiansen's occupation was.

Ovie Christiansen stated he was a cabinet maker.

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

Commissioner Curtiss moved that the Board of County Commissioners approve the request by Ovie Daniel Christiansen to create three parcels by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Chairman Evans stated that Mr. Christiansen would receive a letter confirming today's action. However, this has not been reviewed for access or other criteria. This is just permission to divide the property, it does not give Health Department approval, zoning compliance and no guarantee of access or anything else.

**Hearing: Amend Missoula County Floodplain Regulations (To correct scrivener's error)**

Todd Klietz, Floodplain Administrator, Office of Planning and Grants, presented the staff report.

Previous County floodplain regulations in 1983 and 1989 (and the approved 1991 draft) specifically allowed for the reconstruction of homes in the FLOODWAY: "substantial improvements to any legal, non-conforming structures which existed prior to March 4, 1975 ..." A "substantial improvement" includes reconstruction but does not include an "alteration" which would increase the footprint of a structure. There were additional requirements, but replacement was permitted.

In January, 1991, the County floodplain regulations were revised. All of the documentation in the files suggests that the Commissioners purposefully adopted regulations which continued to allow for floodway replacement. The planning staff report notes only "one significant change" regarding the procedure to replace mobile homes in the floodway (item #5.02.B.10 in the 1991 draft regulations), but makes no mention that other previously existing structures could no longer be replaced. In fact, the very next item in the draft regulations (#5.02.B.11) specifically continued to allow replacement using the same language quoted above. Changing the regulations to prohibit floodway replacement is also not discussed anywhere in the consolidated Planning Board minutes of January 5, 1991. The minutes from the hearing with the County Commissioners on January 30, 1991 also do not address this exclusion. Most importantly, the draft regulations which the Commissioners approved on January 30, 1991 continued to allow for floodway replacement.

The floodplain regulations that were approved on January 30, 1991 were not printed until August, 1991. It is important to note that the August, 1991 edition was printed in a completely different format than previous editions. According to the County Clerk's records, there were no new floodplain resolutions after January 30, 1991 prior to the August 1991 reprint. Additionally, this issue is not addressed in any of the Commissioners minutes from 1991. However, the August 1991 and subsequent editions do not contain the grandfathering clause #5.02.B.11.

As the Commissioners adopted regulations which continued to allow floodway replacement on January 30, 1991 and as there were no new floodplain resolutions between January, 1991 and August, 1991, and as the Commissioners minutes do not include any discussion on this issue, it must be concluded that it was an apparent oversight that the August 1991 edition no longer contained Item #5.02.B.11. It is assumed that in retyping the regulations in the new format, that clause was inadvertently excluded.

Revisions to the City and County floodplain regulations were typically adopted concurrently. The floodway "grandfather" clause existed in the 1983 and 1988 City floodplain regulations but is absent from the 1991 and 1995 City floodplain regulations.

Two things have been modified in the current proposal. First is to allow grandfathering homes that were built prior to 1975, when the County first adopted floodplain regulations. The regulatory floodway can change and can be delineated on new streams. If grandfathering was left at 1975, all the homes that are currently being constructed in an area that may eventually become the regulatory floodway would not be allowed to be rebuilt. The second change to the proposed language would be to require that rather than rebuilding the structure on fill and increasing the footprint of the floodway obstruction, it would require the structures be built on a permanent foundation or piers, which is the same language in the current regulations regarding mobile homes in the floodway.

The Federal government responded that allowing existing floodway homes to be rebuilt was within Federal guidelines. The State DNRC also said the clause was acceptable.

The Office of Planning and Grants recommends approval of the following amendment to be inserted in Section 5.02:

11. Substantial improvements to any legal non-conforming structures which existed prior to the delineation of the regulatory floodway provided all the provisions of Section 5.03.B.3 and 5.03.B.4 of these Regulations are met. In the floodway, the structure must be elevated on a permanent foundation rather than on fill. Flood-proofing shall be accomplished in accordance with Chapter VII of these Regulations.

Chairman Evans opened the public hearing.

Colby Reynolds stated he currently lives north of Florence on 10 acres on the Bitterroot River, all considered to be in the floodway. He has lived there since 1970. The house was originally built in the early 1950's. The way the regulations are currently stated, there is no way he could do anything with his home, he can't remodel it or replace it and the home is in poor condition. He is in favor of this amendment.

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

Commissioner Curtiss moved that the Board of County Commissioners correct the scrivener's error as recommended by the Office of Planning and Grants to include the new language that changes the date to a delineation of the regulatory floodway and add language that, in the floodway, the structure must be elevated on a permanent foundation rather than on fill. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Hearing: Petition to Abandon Right-of-Way (No name roads within DNRC property) – North Avenue at Spurgin Road**

Mike Sehestedt presented the staff report.

This is a petition to abandon road right-of-ways of No-Name Roads within DNRC property, from North Avenue to Spurgin Road, more particularly described as those road right-of-way easements within the lands of the DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION situated in Section 30, Township 13 North, Range 19 West, Principal Meridian, County of Missoula, State of Montana, as described in Commissioners Journal Book P, on page 558, bound by the southerly right-of-way line of Spurgin Road on the north, the northerly right-of-way line of North Avenue to the south, and the easterly line of the NE 1/4 of the SW 1/4 of said Section 30 to the east, and more particularly shown on attached Exhibit A, and described as follows:

The east 60 feet of Government Lot 2 of said Section 30

TOGETHER WITH:

The east 60 feet of Government Lot 3 of said Section 30

TOGETHER WITH:

A 60 foot strip within the NE 1/4 of the SW 1/4 of said Section 30 as described in that certain "Map to Accompany Application for Right-of-Way across Fort Missoula Military Reservation. Application made by Missoula County" dated November 1932 and filed as "File G, Can 5," records of Missoula County Clerk and Records Office and further described as "and a strip of land 60 feet in width, 30 feet on each side of the following described centerline run across and through the NE 1/4 SW 1/4 of which the point of beginning is North 667.5 feet from the (southwest corner of the NW 1/4 SW 1/4) of said Section 30 same Township and Range thence west 1052.0 feet, thence S.63° 50'W. a distance of 304.0 feet."

The reasons for the request are as follows:

1. Veterans Cemetery to be established.
2. Further development of nursery for seedling conservation.
3. Efficient utilization of public land.

The following landowners have been notified: MT DNRC Forestry Division and MT Dept. of Military Affairs.

Chuck Wright stated that the Public Works Department would like those right-of-ways to remain and do not want them vacated.

Mike Sehestedt stated that the Board should accept public testimony today, then recess the hearing and conduct a site inspection. The Board will then reconvene for a decision.

Commissioner Curtiss asked if the abandonment was only within Tract 1.

Mike Sehestedt stated that the petition calls for all of the right-of-ways within the DNRC property, not just Tract 1.

Chairman Evans opened the public hearing.

Charlie Crookshanks: Good afternoon, I'm Charlie Crookshanks. I'm the chairman of the Western Montana State Veterans Cemetery Committee and I, if you wouldn't mind, would just like to take a couple of minutes to review what we've been doing for the last three years. We started three years ago this July to find a site for this cemetery to accommodate what we view as a real need. We have 36,000 veterans that live in the 10 counties west of Lewis and Clark County. There will be more coming in as we move down the road. We looked at several sites over the years and finally decided on the DNRC site. They graciously offered it to us because it was excess land for their use. We have everything in place. The Federal government has a \$3 million grant in place to build the cemetery. The State is ready to accept ownership of the cemetery as soon as the governor signs the Executive Order. There are no general funds from the State of Montana used in the maintenance of any of these cemeteries, it all comes from the surcharge that is levied on Veterans license plates. A lot of people aren't aware of that, but it does not come out of the treasurer at all. I just wanted to brief you on that and give you a little view of where we are. If we're able to get this process completed, the governor is ready to sign the Executive Order then we can move ahead with construction. And I'd be happy to answer any questions you might have.

Commissioner Curtiss: So, Charlie, the governor is waiting for the land, the right-of-way to be vacated before she'll sign?

Charlie Crookshanks: Yes Ma'am.

Chairman Evans: Charlie, I'd like to know why Public Works doesn't want us to do this.

Chuck Wright: Greg explained that because 31st Avenue in the future may be pushed on and we already have a right-of-way there, we didn't want to get rid of the right-of-way because whenever you get rid of right-of-ways you end up having problems buying those right-of-ways and all that sort of stuff. The other, Strand Avenue, coming across, right now Strand Avenue only goes to 26th and then down, I think is where it goes, but North Avenue portion, if you get rid of the north 30 feet then you're going to have just the south 30 feet of the North Avenue right-of-way. So, I was surprised that this wasn't discussed a long time ago.

Chairman Evans: Well, it kind of was, because the County's worked very hard with the Veterans to try and find them a cemetery site.

Chuck Wright: Oh, I know that's a fact because I've been working too.

Chairman Evans: And so it kind of comes as a surprise to me that we'd want to do anything to get in the way of that.

Commissioner Curtiss: So, Mike can you clarify, if we receive a petition to do a certain number of roads, do we have to after, as we know, by law, one of us has to go out and look at this, do we have to accept all or could we abandon some and leave some, could we leave the North Avenue edge there which wouldn't affect the cemetery in reality.

Mike Sehestedt: You can grant a petition in part. The petition and the hearing is what gives you jurisdiction and you can act on anything up to the limits of that. If you choose to go less, then that's fine too.

Commissioner Curtiss: Sometimes people don't understand that in the County, right-of-way is different than in the City, where we don't really own the land, we have easements and therefore the cemetery wouldn't, they would still own the land to the center of the road.

Mike Sehestedt: They'd have the acreage, obviously, because it's subject to an easement in our favor, their uses of it would be limited to those not inconsistent with maintenance of a traveled way.

Gary Sorenson: I'm Gary Sorenson. I just had one question. If the County wanted to build a road there, would they have to go through the State then to get permission to come on their land to do that. How does that work?

Mike Sehestedt: Actually, no, it's not the State's land. Well, it's the State's land, it is State land subject to an easement in our favor, granted by the Secretary of War in 1935. Subsequently, the underlying fee was transferred to the State, but the State took subject to our easement, so as of now, assuming we did not have this issue pending, if the County chose to open that road through there, the State would be unable to stop us in the ordinary course. We have all of the property rights we need to build a road through there right now.

Jean Crow: Good afternoon. My name is Jean Crow, I'm the Right-of-Way Specialist for the DNRC and I'm here this afternoon to not so much talk about the right-of-way but to let you know that I'm a native Montana person. Part of my time growing up was spent here in Missoula. I rode on the bridge trails of the DNRC growing up through grade school and in high school. I'm just sharing the past history of how I grew up on the bridge trails and walked my dogs there in grade school and in high school. Also in high school I was part of a forestry program. We utilized the DNRC to study trees. Also moved on into a forestry program at the U of M, which we also visited the DNRC. Currently, there are hundreds of people who use the DNRC property as public use and the DNRC has always been very open to, I had no idea that I would grow up out there and then riding those trails, utilizing that whole property and then eventually end up working for the

DNRC. When we discovered the two 60 foot rights-of-way through there, in working with Charlie, it just came as a terrible blow to all of us because the DNRC has no intention of, we plan on expanding the nursery out there and in talking about utilizing it in the way that I did when I was growing up and people still are, to put a 60 foot right-of-way through there is going to put the, a monkey wrench in that whole utilization of the whole property out there as it is used today currently. Schools are still utilizing it, people are still utilizing it and the way that the access is set up right now, you come in through a main access that's pretty much monitored which keeps hooligans out of the area, from starting trouble out in there and it's always been maintained as a really nice spot to be. By opening up the 60 foot right-of-way through there, especially north of Big Sky High School, is a potential problem for having parties, smoking pits, destruction to the DNRC property which we frankly cannot afford. So, as a past growing up person, growing up out there, it was such a fun place to use and I know that people are still utilizing it and just to, I want the Commissioners to know that the DNRC's intentions are to keep that property open for the public and let everyone enjoy it like I did and also to allow the broadening of the nursery program out there and then also to give the State Military Affairs their piece of property for the cemetery. I want to be followed up by our legal counsel with DNRC, Mark Pharis, and he has more just on the actual legalities of the rights-of-way.

Mark Pharis: Good afternoon. My name is Mark Pharis, for the record. I don't have much to add to what Jean just stated. I think one point is that I think there is, maybe not necessarily a dispute, but an issue with respect to how the Department of, I think at the time it was the Department of War in 1935, granted the usage rights, the easement across, I guess what would be the continuation of 31st Avenue and of North Avenue. I think the Department views it as I think as Jean said, a continuation of public use of the area and I think we view the use of this segment for the cemetery as kind of part and parcel of that intention. Legally speaking, I don't see any impediment to at some point if you do agree to abandon at least a portion of this to, for a future easement to be granted for perhaps a spur of the road that would accommodate a future public need for that road. So I don't see any impediment to doing that. But, otherwise, I can't think of any specific legal impediments, one way or the other, to either abandoning or not abandoning the road.

Chairman Evans: So let me make sure I understand for the record that DNRC is very willing to allow the piece of property that the veterans would like for their cemetery to be used for that use.

Mark Pharis: Absolutely. Yeah, our intention is, we've got all the documents are drafted and if we're not exactly sure what the process would be from here, you know, depending on whether the roads are abandoned, but the documents are drafted and ready for the governor's signature, essentially to transfer administrative oversight of this specific tract of property from DNRC to the Department of Military Affairs. So, yes, our intention is do that.

Commissioner Carey: Are you suggesting that DNRC might sit down with our Public Works folks and work out some future easements.

Mark Pharis: I don't see any problem with that happening. I think we'd be more than happy to sit down and discuss the possibility of doing that.

Mike Sehestedt: One option you would have would be the vacation contingent on relocation. Clearly, the Veterans Cemetery's been a project of long standing interest. On the other hand, given the way State lands treats us when we need an easement across their property, I'd just hate like hell to give anything away when I could use it to trade for something.

Mark Pharis: And maybe I'll point out that Mike, I think probably on trust lands that is an issue because I think we do, trust lands and administrative, these are administrative lands we're looking at, not trust land.

Chairman Evans: And what Michael says may be true but in my working with the DNRC, you've been very accommodating and I thank you for the land for the cemetery.

Mike Sehestedt: We have ongoing dispute over long standing County roads in other areas.

Chuck Wright: May I ask a question. You're going to have to get into your cemetery anyway, why wouldn't you want to leave a County right-of-way in there.

Charlie Crookshanks: In our preliminary planning, the entrance that we anticipate will come in on the west side off Tower Street and we'll have a second entrance that would be just to the northeast of the Big Sky parking lot. So, that takes care of the entrance problem.

Commissioner Curtiss: So could we relocate rather than move, I mean rather than vacate, is that what you were thinking Charlie?

Chuck Wright: Well I was thinking that you know and when ...

Mike Sehestedt: I think, Charlie, to be honest, if you're going to have a cemetery, you need to be able to secure it.

Chuck Wright: Yeah, I understand. But the thing I'm thinking, they could transfer the land without the easements because you own the land, you could transfer those things and we could get the Public Works Department to decide what they want to do about the situation that we're in. This was kind of a surprise for me because I was just told yesterday morning, but if you want my opinion, my personal opinion is that every time we vacate right-of-ways we end up with problems and we've done it with 80 foot right-of-ways studies in the area out there and give ten foot back on each side and then the City is back buying the same right-of-ways back and the other thing is, what Mike mentioned, is I've had problems with State lands, trust lands, big time and they want to charge us all sorts of money for a right-of-way that we already are driving, you know, have a road on it, and like you said, it's trust lands and that's what they're doing, but I mean if we do have ...

Mike Sehestedt: One thing I want to be real clear on is I don't think we ought to bog the cemetery down in any kind of dispute like this. I would suspect that after the Commissioners go out and take a look at this, certain things will be clearer as to the utility of that right-of-way and we may just discuss some sort of relocation. Mostly, at this point, we're just getting some of those issues out on the table the Commissioners will consider and make their own decisions.

Chairman Evans: By law, we have to go out and look and it generally takes us a week to get that done. I don't know that this will go that fast if you guys want to work out some different proposal.

Mike Sehestedt: Barbara, I would say, I know that time is of the essence, but this has drug on and I think you guys need to go out and look and make the decision on the part that's in the cemetery. The other part, well you can even do it contingent on agreement, it's vacated contingent on establishment of the cemetery and agreement on an alternative. I really don't want to convey to the Board at least on my part, any thoughts that would hold this up. We can do something without holding it up, it might be divided, but ...

Chuck Wright: The other thing to mention, I was told that a representative from the DNRC would like to go with whichever Commissioner is going to go.

Commissioner Curtiss: I think we decided it was mine.

Mark Pharis: Yeah, my understanding, I know, I think I would attend that meeting, I think Sue Clark who is the Bureau Chief out on the site there for the, I think now the Business Management Bureau.

Chuck Wright: So, we'll try to make those arrangements so you can meet us out there or whatever.

Mark Pharis: Absolutely.

Commissioner Curtiss: And Mark, are you here in town?

Mark Pharis: I am. My phone number is 542-4341, that's my direct number. The general switchboard is 4300. I guess I'd like to echo what Mike said, which is that, I think, because this was kind of a surprise relatively late in the game, we're also willing, Jean could correct on this by law, but I think DNRC is willing to sit down and try to figure out what works best for everyone and I think since we are so far along in the game it makes sense to do that.

Commissioner Carey: I agree.

Chairman Evans: Just for the record, Patty, I'd like it stated that the process has taken a very long time, we've had to get Congressional support, the governor's support, the Veterans' varying groups support, it has been a long process to come to this one location and so I think it's important that we do everything we can to make it happen. Thank you.

Charlie Crookshanks: I'm sorry, I just had a couple things I want to pass on. Mr. Hausauer will speak in a moment, he represents Missoula Trails, Franklin to the Fort Neighborhood Council. We've met on several occasions, last year out at the site. He's going to be included with our design subcommittee when we get to that point so that we can accommodate the trail system and the people that want to use that park going through the north part of the cemetery. Ty Robinson and I met with Jim Clarke, Superintendent of Schools, last year. Subsequently went to meet with Paul Johnson, the Principal at Big Sky, and we're going to have the students at Big Sky involved. Paul Johnson suggested the Forestry Club. We thought for two reasons that it would be good to have the High School student body involved. One, because it's something that they need to do in their social work. Secondly, it might defray some possible problems with the site. So, we've already taken those steps and they're underway. Mr. Clarke has been busy, so we won't get back to him until the start of the school year. But I just wanted to pass that on to tell you what we've done to make it more user friendly.

Jim Hausauer: Jim Hausauer, I come as a participant in three different groups here today. Missoula Trails, which we've been to you talking about the Spurgin walkways or in the Transportation Plan, also with the Kelly Island walkway. The Franklin to the Fort Neighbor Council and I've also been a member of the Citizens Advisory Committee to develop the Master Plan for Parks. While I'm a member of those, I'm not speaking representing those groups. We haven't had time to talk about this particular issue. I also would like to emphasize that I come here as a friend of the Veterans Cemetery and a supporter of the folks who are putting that together, they've been great to work with. I also have brought an aerial photograph if that would be helpful, it's pretty big, if you wanted to look at. I had a discussion with Joe Jedrykowski this morning and he wanted me to emphasize that the inclusion of the Spurgin walkway as consideration is something that he wanted to emphasize. That's the main thing that I want to speak to here today. In terms of the Exhibit A, I would recommend that at this point that vacations to accomplish the tract for the Veterans Cemetery be where the focus is. I would qualify a couple of those areas. One the North Avenue section. Chuck and I were looking at some right-of-ways. There's nothing specific right now to utilize that corridor but one of the things that was included late in the transportation plan is a corridor study of Reserve Street and that I'm very thankful for. That is something that I think, once that corridor study is done, it will give us more information on some of these routes that we might target and also the value of that North Avenue property. Some things that could come into consideration, a lot of what if and maybe, is that we may have reason to approve access to C.S. Porter, that could be a not-at-grade crossing, depending on the best location of that, whether it's to the north of the school on North Avenue could put us in alignment with this right-of-way on North Avenue, it could go south of the school on Central, we just don't know. So I would urge caution in that area. Another area is on the right-of-way for 31st, immediately south of the diagonal ditch. The Spurgin walkway includes a corridor that extends from where Mount at 27th dead end, west to that irrigation ditch and then the expectation is to stay south of the irrigation ditch all the way along to approximately the corner of Tower and North Avenue. So the area south of that diagonal ditch, preserving some of that right-of-way, I've had good relations with the Missoula Ditch Company, I couldn't get a hold of them before this meeting. Most of the times in the past they've been very cooperative on working on trails. They usually want at least a 20 foot right-of-way in there. That may be something that we want to clear up through this corridor as far as right-of-ways because this trail is a CMAQ trail and I think you need to secure, probably, easements or right-of-way to insure that. Joe hasn't had time to meet, I'd be happy to meet whenever time would allow. In general, when you look at where 31st goes up to Spurgin on the south side of Spurgin again, I would recommend maintaining at least 50 to 90 feet of right-of-way there. What we've got is the irrigation ditch south of the road and then the general idea is for the trail to be south of that irrigation ditch, that variation of 50 to 90 feet assumes that there's a 60 foot right-of-way on that road, I was just out there double checking those dimensions this morning, but that's another reason to go up, back out on the ground. Overall, I would encourage you to support vacating the areas within the proposed Veterans Cemetery, but maybe to qualify it, to say that if the project does not move forward, that you still preserve those right-of-ways. I did see that

recently in examining some right-of-ways with the Forest Service compound south off of Tower, those right-of-ways have been vacated with that kind of qualification. And then I would say not to vacate the rest of the right-of-ways until this corridor study takes into consideration where we might want a corridor through here. The east side of the proposed Veterans Cemetery is in alignment with Hiberta. That has been an area where a corridor has been recommended. Of course, they don't like that but we haven't made a decision. So, I would hold off vacating anything outside the Veterans Cemetery and maybe there we're pretty close to needing to get these right-of-ways determined for Spurgin walkways, maybe there, that's a place where we could trade some right-of-ways. Also, with regard to the Master Parks Plan, conceptually, there are a couple of parks listed that would be on this page and while the specifics are not to be determined, one of those neighborhood parks is close to the corner of 27th and Mount and another one is basically south of Spurgin where Fish, Wildlife and Parks and Big Sky come together. So, I would urge caution and again, I solidly support the Veterans Cemetery, these folks have been great to work with. So, thank you for that.

Commissioner Carey: Would you like to be notified when the site visit is going to occur.

Jim Hausauer: Yes I would. I've been walking around out there quite a bit and I'd be very happy to do whatever I could.

Commissioner Carey: Could you give Patty your phone number.

Jim Hausauer: 721-4928, P.O. Box 3196, 59806.

Joe Foster: For the record, my name is Joe Foster, the Administrator for Montana Veterans Affairs. I do want you to know that we have already obtained pre-application approval for this cemetery program and it has escalated from initially a \$2 million project to potentially \$3 million, based upon the addition of columbarium, outdoor restroom, etc. We're going to do everything we can to get this as ultimately approved to do it right and do it, of course, in partnership with the Missoula community and all those interested. There is one issue though that I do think needs to be clarified and it is with the right-of-way. In visiting with Sue Clark, it is my understanding that unless these rights-of-way were approved in total, and perhaps that's changed since Sue and I last talked, that the transfer couldn't take place. We have to have the transfer before the Executive Order will be signed and if DNRC needs to have the complete package of the right-of-ways abandoned, unless that happens, you know, whatever they're satisfied with is important to us, and so nothing will happen unless they're satisfied with the right-of-way issue and it sounds like it's already gotten a bit more complicated than any of us every envisioned, so I just hope that all this can be cleared up satisfactorily certainly for DNRC, as long as we have that land, we will build it right and maintain right.

Jean Crow: I'm going to take off my living in Missoula area hat and go back to a right-of-way specialist for the DNRC. In doing the research on that State land, which, with the 23 acres excluded, leaving us 162 acres in 73, I'd like to draw your attention to 29th Avenue, you're seeing only a 30 foot right-of-way on the private sector part of that. You currently have 30 foot of right-of-way on DNRC land that has not been legally cited. I would like to reiterate that the DNRC would like to remove all of the two 60 foot rights-of-way through the DNRC, not to say that we would not in the future work with Missoula County in any kind of development effort that would ever come within the future. That is not in the picture though, they are currently, they're focusing on expanding, once again I want to reiterate the expansion of their nursery program. To have that cloud hanging over their head and the possibilities of opening up a 60 foot right-of-way through there could only cost the State substantial amount of money to try to maintain security in that area, fencing and I went into that. I think that when we do go the discussion table with Public Works, we can discuss, like 29th Avenue, that you currently are encroaching on State land. The State is willing to work with you. I think there's a whole group of new people that are willing to work with you. I think that perhaps that if you've had bad history, why don't we forget about that and go forward and see what we can do to facilitate everybody's needs. I think that's what really everybody wants. Regarding the ditch easement, that's under a whole specific set of laws from my understanding and where that's going with, no one has ever come to the table as far as I know as being from the DNRC and discussed any types of rights-of-way through there and I think that Ray Tipp might have indicated that to me in my talking with him. So, you know, the DNRC currently owns the land. We do currently have the Corps of Engineers searching their records because there seems to be some vague gaps in property ownership, especially, I have a patent signed in 1948 from the Bureau of Land Management to the University of Montana and then in 1976 or somewhere, I'm not going to quote the time, when they quitclaim deeded the property to the DNRC. So, currently, Missoula County has some missing gaps, we have some missing gaps. We currently have the Montana Military Department searching their records. In 1995, they had a breakup of records. They're currently searching their records to find out where is the document that actually granted that right-of-way to Missoula County. Missoula County has not been able to provide that to us so we don't have a written instrument actually showing the legal transfer, or actually the ability to assign that to us without showing us where is the document that said the Military Department owned that at the time. I see what you're referring to there, we all looked at it as being somewhat vague and like I said, they're searching their records to try to find the, as in one record indicated in there a letter that questioning whether or not it had been revoked because they had not used it for a long period of time. Corps of Engineers, State of Montana Military Defense Department is currently searching their records for us to maybe, you know, confirm or possibly bring up something that we just haven't been able to see other than what's in the Commissioners Journal in the page. Interesting enough that the title report run on that piece of property, that Commissioners log was never stated on that title search. So, I just wanted to point out that the DNRC is willing to work with Missoula County, we really do want those 60 foot rights-of-way vacated for the purposes that we have all stated, not only for the Military Affairs, but also just for the sake of keeping that intact for our nursery and also public use and I know that the DNRC is willing to work with Missoula County about that.

Mike Sehestedt: I have a quick question. So, you're willing to grant trails across this property?

Jean Crow: This is the first that I have heard of a trail issue across there. Were you asking him or me?

Mike Sehestedt: I was asking you, if you're willing to work with us, what are the limits?

Jean Crow: Absolutely. In fact, as I had said about the growing up here and having the trail systems through there, the DNRC is very public friendly, we encourage the public to use the facility out there for that very reason. The reasons why we don't want to have open access is for the very reason to keep vandalism out of there, people are less likely to go in and vandalize an area like that when you have to come through a maintained access. Currently I'm working with the Owen



Sauerwine Natural Area in the Flathead Valley where we have had to also kind of close down State lands a little bit with fences and made just specific access points so that it discourages vandalism, discourages the hoodlums from getting in there. When you have certain areas and then neighborhood watches kind of watch those particular area, you don't have people going in there and causing problems. So this is, you know, some of the really the strongest reasons that I think that we should not be split like that and our own maintenance of having to cross a busy road of kids flying out of school and going over there, I got to tell you, that, you know, think about that one, how difficult that would even be. In the future, if they come to the table, talk with Sue Clark, the Bureau Chief, and also have Ray Tipp, Missoula Ditch, he's the ditch rider or the district manager. I'm certain that that is workable.

Mike Sehestedt: The punch line is you don't object to public right-of-ways for non-motorized transportation to bisect DNRC property. I'm hearing, and the reason I ask this question, is I'm hearing a contradiction. You're open and public friendly, you just don't want the public to have free access across it. And I'm trying to get square how we could have a path, one of which I heard possibly along the line of the ditch. Is that something DNRC is willing to contemplate or is there a danger that we'll have hooligans on foot or by bicycle accessing DNRC property.

Chairman Evans: I'm going to ask that you folks discuss this outside of this meeting and hope we can all come to something that's satisfactory for everybody. And so, we will discuss this again next Wednesday after a Commissioner has had the time to go out and meet the legal requirement to view it. And Patty will let the folks know when we're going to be out there so that you can come and watch if you like.

Commissioner Curtiss: And just to clarify, Missoula County very seldom builds roads. So, just because we have an easement doesn't mean we're going to come in a build a road, but if in the future, there is no need for trees anymore, I'm making this up of course, and it might be 50 years from now that DNRC decides that there's not a need to have a State nursery there, there may be a reason for a road somewhere, we of course don't want to bisect through the cemetery, but, so having a right-of-way doesn't mean we're going to come a build a road anytime soon, because we don't build roads. We maintain.

Chairman Evans: Thank you. Is there anybody who'd like to speak on any other matter. There being none, we're in recess. Oh, I didn't see you hiding back there, I do apologize.

Dick Haines: For the record, Dick Haines, State Representative. First, Commissioner Evans I really appreciate your remarks a minute ago getting this matter resolved. These people here are starting to have a salmon complex, every time they get around one more obstacle and think there's a clear shot ahead of us, something else rears its head. It's been a very emotional rollercoaster for a lot of these people, up and down, stop and go. I think that if this thing can be resolved without getting into whether or not this right-of-way is valid or not valid. I started asking questions yesterday that I'm hearing now about where the military came into this and this sort of thing. That's all well and good but I would hope we don't have to go there. Anything you can do to accommodate this request to vacate would be greatly appreciated by an awful lot of people. One last comment, I'd like to congratulate Commissioner Carey on his tough legislative win, it's been really an uphill struggle to win that, I realize. Congratulations.

Commissioner Carey: Thank you Dick.

Chairman Evans: Congratulations to you as well. Okay, we are in recess.

There being no further business to come before the Board, the Commissioners were in recess at 3:05 p.m.

#### THURSDAY, JUNE 10, 2004

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

Claims Lists – The Commissioners signed two (2) Claims Lists, dated June 7, 2004, with the following grand totals:

- 1) \$11,690.21; and
- 2) \$103,137.66.

The Claims Lists were returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 9, 2004, with a grand total of \$24,657.02. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Malt-O-Meal, Minneapolis, MN as Principal for Missoula County Public Schools (Food Service) Warrant #27-106055, issued April 14, 2004 on the Missoula County Food Service Fund in the amount of \$1,074.14 (for food), which cannot be found.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Michael McMeekin, for the month ending May 31, 2004.

#### ADMINISTRATIVE MEETING

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

Contract – The Commissioners signed a Professional Services Contract between Missoula County and Steve Kent, Superior Yard Care, for weed mowing services within the Missoula Development Park. The total amount shall not exceed \$56.00 per hour up to maximum contract amount of \$3,864.00. The contract commences within 48 hours of notification of contract approval and concludes no later than June 22, 2004. All other terms and conditions are set forth therein.

Resolution No. 2004-083 – The Commissioners signed Resolution No. 2004-083, dated June 10, 2004 adopting the Master Park and Recreation Plan for the Greater Missoula Area as an Amendment to the Missoula County Growth Policy. The Plan was amended by the Missoula County Planning Board on April 27, 2004 and was approved by the Commissioners at the public hearing on May 19, 2004.

Task Order – Chairman Evans signed Task Order No. 04-07-4-51-106-0 to the Missoula County Master Contract between the Montana Department of Public Health and Human Services and the Partnership Health Center (“PHC”) for the delivery of comprehensive outpatient health and support services to meet the needs of HIV-infected individuals and their families (Ryan White III Contract). The total amount of this Task Order shall not exceed \$73,000.00. The term will be April 1, 2004 through March 31, 2005. The document was returned to Terry Delgadillo at PHC for further signatures and handling.

Letter – The Commissioners approved and signed a letter, dated June 10, 2004 to all County Commissioners and friends in the State of Montana, inviting them to participate in this year’s MACo Convention, which will be held in Missoula. The letter sets forth the various activities that will occur during the convention.

Other items included:

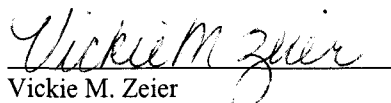
- 1) Commissioners Carey and Curtiss will fill out the form for the annual evaluation of the Executive Director of MACo (Montana Association of Counties).

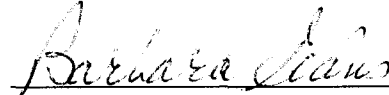
The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, JUNE 11, 2004**

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

Claims List – Commissioners Carey and Evans signed the Claims List, dated June 10, 2004, with a grand total of \$447.10. The Claims List was returned to the Accounting Department.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, JUNE 14, 2004**

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

Claims Lists – Commissioners Carey and Curtiss signed three (3) Claims Lists, dated June 10, 2004, with the following grand totals:

- 1) \$48,830.86;
- 2) \$15,284.36; and
- 3) \$2,891.02.

The Claims Lists were returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated June 11, 2004, with a grand total of \$9,380.18. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated June 14, 2004, with a grand total of \$51,842.49. The Claims List was returned to the Accounting Department.

**TUESDAY, JUNE 15, 2004**

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

Election Canvass

In the forenoon, Commissioners Curtiss and Evans and Rachel Vielieux, County Superintendent of Schools, canvassed the Primary Election, which was held on June 8<sup>th</sup>.

Site Inspection

In the afternoon, Commissioner Curtiss accompanied Director of Public Works Greg Robertson, on a site inspection for the request to abandon right-of-way within DNRC property at North Avenue and Spurgin Road.

Claims List – The Commissioners signed the Claims List, dated June 14, 2004, with a grand total of \$158,808.47. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed two (2) Claims Lists, dated June 15, 2004, with the following grand totals:

- 1) \$26,632.83; and
- 2) \$9,027.63.

The Claims Lists were returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Agreement – The Commissioners signed one (1) Sanitary Sewer Grant Program Agreement for Partial Assistance to Owner-Occupied Households Secured by Real Property, dated June 9, 2004 with Robert M. and Sharolet A. McDonald, 604 Sommers Street, as part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District. All sewer development fees and on-site connection costs and fees are as set forth therein.

Contracts – The Commissioners signed two (2) Professional Services Contracts between Missoula County and the following for the treatment of noxious weeds on Missoula County right-of-ways:

- 1) With Pioneer Weed Control for Woodworth road, and the Potomac and Greenough area roads, in an amount not to exceed \$5,180.00 ; and
- 2) With Helena Weed Control, LLC, for the Nine Mile Road System, Frenchtown Frontage Road, and the Black Mountain Fire roads, in an amount not to exceed \$3,150.00.

The term for both contracts shall be June 1, 2004 through June 30, 2004. All other terms and conditions are set forth therein.

Contract – The Commissioners signed a Contract, dated June 15, 2004 between Missoula County and New Dawn Technologies for the provision of 10 additional licenses for *JusticeWebview* so that the offices of the Sheriff, Crime Victim, and City Police can access the information in the County Attorney System. The total amount shall not exceed \$11,250. All other terms and conditions are set forth therein. The document was returned to Jim Dolezal in Information services for further signatures and handling.

Agreement – The Commissioners signed a Referral Testing Agreement, dated September 1, 2004 between Bourget Health Services Inc. (d/b/a Pathology Health Services, Inc.) and the Missoula Ryan White Program (through the Partnership Health Center (“PHC”)) for clinical laboratory services for PHC. The term will be for one year. All other terms and conditions, including a fee schedule, are set forth therein. The document was returned to Terry Delgadillo at PHC for further handling.

Resolution No. 2004-084 – The Commissioners signed Resolution No. 2004-084, granting preliminary approval to the proposed issuance of a revenue note in an aggregate principal amount not to exceed \$5,000,000 under Montana Code Annotated, Title 90, Chapter 5, Part 1, and granting preliminary approval to the loan of the proceeds of such revenue note to the Rocky Mountain Elk Foundation, Inc. A hearing on these Bonds has been set for June 23, 2004. This resolution will allow expenses incurred prior to the hearing to be paid out of Bond proceeds. It is noted that under Section 2.08, the County retains the option of not issuing the Bonds.

Other items included:

- 1) The Commissioners discussed and approved the following items relating to the budget and County employee health insurance:
  - a. The deductible will be increased to \$500 (single) and \$1,500 (family); vision coverage will be an option that an employee may purchase;
  - b. The staff will be directed to re-open the Flex Plan (which will open the week of the 21<sup>st</sup> for one week);
  - c. The Commissioners will backfill the Trust by \$131,300; and
  - d. The staff will be directed to load a \$300,000 enhancement as a reserve for Health Trust. The source will be named at a later date.

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

**WEDNESDAY, JUNE 16, 2004**

The Board of County Commissioners met in regular session; all three members were present. In the evening, the Commissioners and County staff members conducted a Public Discussion meeting regarding the proposed Code Enforcement Program for Missoula County; the meeting was held at the Senior Center in Seeley Lake.

Claims List – The Commissioners signed the Claims List, dated June 15, 2004, with a grand total of \$32,567.69. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed three (3) Claims Lists, dated June 16, 2004, with the following grand totals:

- 1) \$11,724.20;
- 2) \$25,550.00; and
- 3) \$25,000.00.

The Claims Lists were returned to the Accounting Department.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Edna Sampson, Missoula, as Principal for Financial Services (Accounting – Payroll Department) Warrant #281551, issued May 14, 2004 on the Missoula County General Fund in the amount of \$103.73 (for payroll), which cannot be found.

CHIEF ADMINISTRATIVE OFFICER MEETING

BOOK 004 PAGE 0130

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

Agreement – The Commissioners signed a Satisfaction of Sanitary Sewer Grant Program Agreement for Property Owners, dated June 16, 2004, with Earl T. and Sharon M. Smith, 4 Canyon View Drive, declaring fees fully paid, satisfied and discharged. The original agreement dated September 18, 2003, and recorded in Book 718, at Page 349, is part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District.

Notice and Amendment – The Commissioners signed a Missoula County Employee Benefits Plan Notice to Plan Members, June 16, 2004 setting forth further immediate changes to the employee health plan. These changes are necessary due to health insurance claims which significantly exceed revenue. All changes are set forth therein. The document was returned to Hal Luttschwager, Plan Administrator, for further handling. The Commissioners also signed a Missoula County Employee Benefits Plan Amendment (Exhibit 8.08), dated June 16, 2004 declaring a \$500 per person/\$1,500 per family deductible each benefit year to all covered medical expenses, except prescription drugs purchased with the prescription drug card or mail order drug purchase program provided by the Plan. The Amendment becomes effective as of July 1, 2004. The \$100 per person deductible previously adopted by Amendment on March 25, 2004 (Plan Exhibit 8.06) is rescinded.

Contract – The Commissioners signed a Professional Services Contract, dated June 9, 2004 between Missoula County and Bodell Construction Company for reconstruction work on the Van Buren Street Pedestrian Bridge. The estimated total amount of the contract is \$337,540, and is being funded with CTEP, MRA, City and County funds. The work will be substantially completed no later than August 30, 2004. All other terms and conditions are set forth therein. The document was returned to Joe Jedrykowski at Public Works for further handling.

Agreement – Chairman Evans signed a Memorandum of Agreement, dated May 25, 2004 between the Missoula County Park Board (the "Board") and Bonner Development Group for assistance with park development. The Board agrees to provide up to \$530.00 in matching funds from the Capital Matching Fund Program (Spring FY04), and must be spent by May 30, 2006. The document was returned to Lisa Moisey, County Parks Coordinator, for further signatures and handling.

Other items included:

- 1) The Commissioners reviewed and approved the Missoula County Enhancement Matrix for FY 2004.
- 2) The Commissioners moved to correct errors and initial changes to the Verizon Lease with the Missoula County Fairgrounds.

**PUBLIC MEETING – June 16, 2004**

The Public Meeting was called to order at 1:30 p.m. by Commissioner Barbara Evans. Also present were Commissioner Jean Curtiss, Commissioner Bill Carey, Chief Civil Deputy County Attorney Mike Sehestedt, County Engineer Joe Jedrykowski and County Public Works Assistant Director Chuck Wright.

**Pledge of Allegiance****Public Comment**

None

**Routine Administrative Actions**

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$506,921.72. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Bid Award: Asphaltic Plant Mix (Public Works)**

Joe Jedrykowski presented the staff report.

Bids were advertised for Asphaltic Plant Mix with two vendors responding as follows: LS Jensen in the amount of \$334,630 and JTL Group in the amount of \$343,980. It is the recommendation of the Public Works Department to award the bid to LS Jensen in the amount of \$334,630 as the lowest responsible bid.

Chairman Evans asked for public comments. There were none.

Commissioner Carey moved that the Board of County Commissioners approve awarding the bid for Asphaltic Plant Mix to LS Jensen in the amount of \$334,630 as the lowest and most responsible bid. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Bid Award: Ice Rink Renovation Site Work (Fair)**

Scot Meader, Fair Manager, presented the staff report.

Bids were advertised for the Ice Rink Renovation Project Site work with two vendors responding as follows:

Bidder	Base Bid +	Alternate 1 =	Subtotal	+ Alternate 2 (if necessary) =	Total Bid
JTL Group	\$76,161.50	\$13,720.00	\$89,881.50	\$38,220.00	\$128,101.50
Quality Construction	\$72,557.80	\$5,381.00	\$77,938.80	\$41,371.00	\$119,309.80

Quality Construction’s bid amount of \$41,371.00 for Alternate 2 will only be necessary if the soil material does not meet the GP soil requirements. About 3.5 feet of soil needs to be removed to get level and have the drainage set. They are not sure about the material under the base of the slab. A soil test will be conducted to know if the alternate will be necessary. If the soil is not compatible, an additional amount will need to be removed.

It is the recommendation of staff to award the bid to Quality Construction in the amount of \$77,938.80 and the additional amount of \$41,371.00 should it be necessary.

Commissioner Curtiss stated that it is not known what is under the existing slab.

Scot Meader stated that was correct. Ice rink insulation is a fairly complicated process. The new ice slab will have a heating element to heat the ground to prevent frost heave. This will eliminate the need to thaw the ice slab every year and extend its lifespan.

Commissioner Curtiss moved that the Board of County Commissioners approve awarding the bid for the site work for the Ice Rink renovation project to Quality Construction in the amount of \$77,938.80 as the lowest and most responsible bid, understanding that the additional amount of \$41,371.00 for Alternate 2 will only be necessary if the soil material does not meet the GP soil requirements. Commissioner Carey seconded the motion. The motion carried on a vote of 2-0.

**Decision: Petition to Abandon Right-of-Way (No name roads within DNRC property) – North Avenue at Spurgin Road**

This is a request for a petition to abandon road Right-of-Ways of No-Name Roads within DNRC property from North Avenue to Spurgin Road more particularly described as those road right-of-way easements within the lands of the DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION situated in Section 30, Township 13 North, Range 19 West, Principal Meridian, County of Missoula, State of Montana, as described in Commissioner’s Journal Book P, on page 558, bound by the southerly right-of-way line of Spurgin Road on the north, the northerly right-of-way line of North Avenue to the south, and the easterly line of the NE 1/4 of the SW 1/4 of said Section 30 to the east, and more particularly shown on attached Exhibit A, and described as follows:

The east 60 feet of Government Lot 2 of said Section 30

TOGETHER WITH:

The east 60 feet of Government Lot 3 of said Section 30

TOGETHER WITH:

A 60 foot strip within the NE 1/4 of the SW 1/4 of said Section 30 as described in that certain “Map of Accompany Application for Right-of-Way across Fort Missoula Military Reservation. Application made by Missoula County” dated November 1932 and filed as “File G, Can 5,” records of Missoula County Clerk and Recorder’s Office and further described as “and a strip of land 60 ft. in width, 30 ft. on each side of the following described centerline run across and through the NE 1/4 SW 1/4 of which the point of beginning is North 667.5 ft. from the (southwest corner of the NW 1/4 SW 1/4) of said Section 30 same Township and Range thence west 1052.0 feet, thence S.63°50’W. a distance of 304.0 feet.”

The reasons for the request are as follows:

- 1. Veterans Cemetery to be established.
- 2. Further development of nursery for seedling conservation.
- 3. Efficient utilization of public land.

The following landowners have been notified: MT DNRC Forestry Division and MT Dept. of Military Affairs.

The public hearing on this matter was held Wednesday, June 9, 2004. A site inspection was conducted by Commissioner Jean Curtiss and County Public Works Assistant Director Chuck Wright on Tuesday, June 15, 2004.

Chuck Wright: My name is Chuck Wright and I’m the Assistant Public Works Director/Surveyor. I went out with Commissioner Jean Curtiss to view the abandonments on the DNRC property. We don’t want to abandon the roads, what we want to do is alter those roads. The dashed lines are those original lines. We’re proposing to alter this north/south road to move over with the prolongation of Hiberta and come down from Spurgin to North Avenue right-of-way and then we want to take this prolongation of Strand and shorten it so it gets in here, so that would be what the configuration would be. If you’ll notice on this aerial photography, there is Hiberta and there is already some kind of an existing road from here down to here and then it’s not as wide here. So, this would come all the way down to North Avenue and that’s what we’re proposing, moving this right-of-way in here and there’s nothing really there, out in there, it looks like it’s trees and something like that going in through there, there’s a little road there. But that’s what we propose to do. Thank you.

Chairman Evans: Jean, you went out and saw it with them. Would you give us your recommendation.

Commissioner Curtiss: Right. So, also meeting us on the site were Jim Hausauer, who is interested in trails, of course, and Sue Clark from DNRC and Mark Pharis from DNRC met us on-site. So we did walk through the property and of course the goal of this whole proposal is to take the encumbrances off of the property that’s being proposed to transfer for

the Veterans Cemetery. There's a little unique thing that Charlie can probably explain much better than I, that these roads were actually given to us by the War Department in 1935 and for them to be, they are called ...

Chuck Wright: Revocable permit.

Commissioner Curtiss: Revocable permit, but that has to come from Rumsfeld or President Bush or someone. And the reason that we, as we walked through there, we thought it would be better just to move the right-of-ways over, in other words, alter rather than abandon. I understand that Jean Crow, who is the right-of-way person for DNRC, who wasn't able to meet with us yesterday, has some concerns now, but I'm going to propose what we decided then, then we can allow public comment and we may decide to amend the proposal. So, my motion would be that the Board of County Commissioners alter, not abandon, the location of the 60 foot right-of-way of the No-Name Road that's shown on Exhibit A in our packets, I do have handouts here marking where I'm proposing that they would go, I would propose we change the location of the 60 foot right-of-way to the east, to be east of the eastern boundary of the proposed Veterans Cemetery running north and south from North Avenue to Spurgin Road in line with Hiberta as Chuck just showed us and that we also alter the 60 foot right-of-way of the No-Name Road shown on Exhibit A traversing east and west to be in line with Strand so that it just intersects this new north/south right-of-way but does not continue into the proposed Veterans Cemetery. The results of these alterations would be that the unnamed right-of-ways would not encumber the proposed Veterans Cemetery.

Mike Sehestedt: Jean, could I make one quick comment?

Commissioner Curtiss: Yes.

Mike Sehestedt: We can do this as an alteration only if we have the consent of the property owners that would receive the relocated right-of-way. If we do not have that consent, you have essentially three choices. First is to simply deny the requested vacation in total. The second is to grant the requested vacation in total and the third is to grant the requested vacation in part and leave the remaining unvacated right-of-ways in place.

Commissioner Curtiss: I understand that Mike and I did tell DNRC that I was going to propose this as we discussed yesterday and then we could discuss it.

Mike Sehestedt: I knew you did and I just wanted to get it on the record.

Commissioner Carey: So, I'll second that motion.

Chairman Evans: Certainly like to have all of you who want to say something on this come up and give us your opinion on this. Tell us whether or not it's okay with you if we do as Jean is suggesting.

Charlie Crookshanks: I'm not going to speak to that particular issue, I wanted to just go over some of things I said last week. The Veteran's Administration in Washington, D.C. has given us \$3 million to complete this project. Governor Martz is standing by to sign the Executive Order and today, Joe Foster, who is the Administrator of the Montana Department of Veteran's Affairs, is interviewing design firms to start letting contracts to begin the design work. So, we appreciate your hard work and we hope we can come to some accommodation that meets everybody's needs. But the main thing is we need to move ahead, we trying to get the design man from Washington, D.C. out here in July or August and hopefully we could do this job and have the dedication on Memorial Day next year. So, thank you very much.

Chairman Evans: Thank you Charlie. Anybody else who'd care to speak?

Jim Hausauer: I wanted to bring up the question of North Avenue that was part of the consideration. We haven't said anything about that today. I just wanted to remind you about that and then make myself available if you had any questions.

Commissioner Curtiss: In response to Jim's point, the right-of-ways of North Avenue and Tower Street, they show just kind of right along the edge, of course, of the property. We weren't proposing to abandon, they don't really encumber the property, it's just normal to have right-of-way that actually shows up on somebody's property line, so those are needed for existing roads.

Chairman Evans: Anyone else who'd care to speak?

Sue Clark: For the record, I'm Sue Clark, Bureau Chief for Budget and Facilities Management with DNRC and I did, as Jean spoke of earlier, had the opportunity to view the property once again yesterday and I stand here before you taking position for the Department of Natural Resources that we do abandon in full these right-of-ways that I'm not even 100% are valid at this time. The reason I say that is because when this transfer of ownership was actually conducted, it was never recorded, so I am not confident that this abandonment and these rights-of-ways are still valid, but I would request full abandonment of these right-of-ways anyway, if in fact that does not prove to be effective today, the Department will go ahead and go forward as planned and work with the Veteran's Committee and transfer this property over to Department of Military Affairs and DNRC will then dig deeper and see what we can come with, with the Federal government to find out what the validity actually is concerning these right-of-ways.

Chairman Evans: Thank you Sue. Michael, would you like to comment on this. It makes the water a little more muddy for me.

Mike Sehestedt: Well, I don't think it necessarily makes it any muddier, I mean, I believe the statement these were not recorded is based on the fact that whoever the State contracted with to do title work didn't find them, because they are indubitably recorded in the property records, micro records of Missoula County and have been since approximately 1935. That said, clearly, Commissioner Curtiss' option is precluded by the comments of DNRC.

Commissioner Curtiss: So, would I be better off to withdraw that motion and make a new one.

Mike Sehestedt: I would suggest a substitute motion addressing one of the other three alternatives, which are deny the vacation in total, grant the vacation in full or vacate that portion of the two unnamed roads lying within the perimeter of the proposed Veterans Cemetery.

Chairman Evans: Thank you Michael. Anybody else care to speak? Please come to the front.

Jean Crow: Jean Crow, Right-of-Way Specialist for DNRC. I'd just like to share with you, in Section 36 in Kalispell, we currently have development going on there. We go ahead and move forward with the transportation development and infrastructure and then as that procedure goes through then we go ahead and grant rights-of-way to the City or County, whichever it would be, in whichever case, and it happens to be the City because we're still in the City limits up there. So I just would like to encourage the Commissioners to realize that we're really looking forward to abandoning what we don't perceive as to be even valid rights-of-way through there right now and in knowing that in the future, and I would say very much in the future, probably none of us will even be alive at that point, that the DNRC facility on Spurgin Road would decide to sell that property for development, there would be no reason why the DNRC would hold any kind of rights or withhold anything from the County at that point to take over and then the DNRC deed rights-of-way at the time that a developer would be involved, the DNRC would be involved, everyone would be involved at the table of determining where exactly you would need rights-of-way through that area, around the cemetery, of course. But at this time, since everything is really clouded, we're not sure, 100% sure, if you really hold a valid right-of-way through there. We're just asking that you release that, extinguish it and then in the future know that the DNRC would be there working with the County for any kind of development purposes, but that is not going to happen, like I said, in our lifetime.

Chairman Evans: So Jean, if we were to abandon, Michael you correct me if I get this wrong, anything that's within the Veterans Cemetery but leave the rest of it alone, would you be satisfied with that.

Jean Crow: Sue, speaking for the Department of Natural Resources, we would like all rights-of-way abandoned. We have no need for them to come through nor do we see any purpose for you, as you stated at the last meeting, you're not in the business of developing roads. Is there any purpose for you to hold those and why couldn't you come later to the table if the DNRC ever were to develop that property and sit down and work out a transportation plan at that point.

Chairman Evans: I personally feel we're kind of caught in a bind here because we don't want to do anything that's going to harm the potential for the Veterans Cemetery. We don't want to do anything that upsets you nor do we want to upset our Public Works Director who sees ahead and knows what roads might be needed in the future. So, I probably will agree to abandon the things that are within the Veterans Cemetery boundaries and that's probably all I'd be willing to do today. I think if you want to come back and convince us to do the rest, working with the Public Works Director, that you might get it done that way.

Jean Crow: Or should, you know, we have some people out in Seattle searching the records right now for, within the Military Department, and then also, legal counsel will be continuing to work on this as to whether or not at the point that the Military Affairs transferred the property to the State, whether, and since it wasn't filed in public records, this document, whether or not that even runs with the property. So there's a chance that you don't even have the rights that you think that you do.

Commissioner Curtiss: They are filed in our public records, right down the hall.

Mike Sehestedt: This is an easy question to answer. You walk down the hall, you go to Book P in microfilm and you go to Page 558 and since 1935, this document has been filed in the public records, but I don't think we need to resolve this. If DNRC thinks they can successfully challenge it on down the road, they can be my guest, but the suggestion that if we come to the table, they'll play nicey-nicey with us at some point in the future, my reaction, given this conversation, is it would be nice to come to the table with a piece of our own.

Commissioner Curtiss: So, I would substitute, have a substitute motion, that we abandon the two unnamed roads that, in Exhibit A, line up with 31st Avenue and Strand Avenue, but not abandon the small parts of right-of-way that are Tower and North Avenue, we only abandon the pieces within the proposed cemetery, so the exact locations would be determined by the survey that they will be doing to locate those corners.

Chairman Evans: Is there a second?

Commissioner Carey: I'll second the motion, but isn't in question whether or not we have the power to do this.

Mike Sehestedt: I don't think we have any question, I don't think there's any question that you could act to vacate any claimed right-of-way we might have. Your action in doing so can't really be challenged.

Commissioner Curtiss: They want it abandoned.

Mike Sehestedt: They want it, we're just vacating, we're not relocating.

Chairman Evans: Okay, anyone else who'd care to speak? Nick?

Nick Kaufman: For the record, Commissioners, my name is Nick Kaufman. I'm actually here on another item. I'd like to provide some public comment here. As Missoula continues to develop, the one thing that we seem to have the least amount of is contiguous open space. Not far from here, in fact, just off the map, is the Equestrian Park that is owned by Missoula County, which is a significant piece of open space. And if I listen to the discussion about rights-of-way through open space and I think to myself, what we'd be talking about here if there were two existing County right-of-ways which crisscross the Equestrian Park, similar to the existing right-of-ways that crisscross DNRC. We would say that those right-of-ways create a propensity for future development. Because there's right-of-way there, the open space can be bisected. Someone in the community could demand that those right-of-ways be opened and now suddenly what we'd have is public right-of-ways that cross this piece of DNRC, but public open space in two locations, which split it up into four parcels now



instead of one single parcel. And so if we were to just think about this piece as being our piece, which is the Equestrian Park, and someone coming forward and saying, hey, wait a second, the lower portion of this we're proposing in open space use, which is a Veterans Cemetery, we don't want those rights-of-way through there, we want the Veterans Cemetery. As a member of this community for the last 30 years, I really want to see the propensity for that open space to stay in one chunk, just like the Equestrian Park to stay in one chunk. And quite honestly, the presence of those right-of-ways is a propensity to break them into pieces or toward future development, and I'd like to see them vacated. Thank you for your consideration.

Mike Sehestedt: If I might respond. Tower Avenue was extended across the County ownership to provide both access to the 160, the Equestrian Park side of it and the ballpark side of it, and to provide an alternative traffic route for Big Sky High. I don't think anyone suggests that that was inappropriate. What will happen in the future in this area is difficult to say. If DNRC comes to us with the proposal that says we vacate, we'll give you the extension of North Avenue and we'll give you right-of-way on 29th Avenue creating some connections, maybe we can talk. There's also discussion about trying to extend pedestrian/bikeways through this area. My preference is that we maintain the pieces we've got so we have something to bring to the table when we talk with DNRC.

Chairman Evans: Anyone else who'd care to speak?

Commissioner Curtiss: Just one more comment. I believe that the reason State law says that a Commissioner and the Surveyor need to visit road sites is to see if there's any need for potential use in the future. I think that it's just incumbent upon us to look at future needs. There are right-of-ways that are across property all over the State that may never be used, but I think that if we gave all of this right-of-way away, we would not be looking toward the future. We definitely want to make sure that the cemetery happens here, we don't want our roads going through it other than the ones that they design for access to the cemetery. Just speaking in favor of my motion.

Chairman Evans: Is there anybody else that would care to speak? Anyone else who'd care to speak? Okay, we'll close this portion of the hearing. We have a motion, we have a second, all those in favor of the motion say Aye.

Commissioner Carey: Aye.

Commissioner Curtiss: Aye.

Chairman Evans: Aye. The motion carries. And certainly, if you folks want to come back and talk to us about doing something like Michael suggests, we'd be more than happy to do that. And we thank you for coming.

Commissioner Curtiss: Thanks for meeting with us yesterday. I thought we had come to more of a consensus.

**Consideration: Shadowridge Addition (3 lots on 5.28 acres) – Northeast of the Wye**

Tim Worley, Office of Planning and Grants, presented the staff report.

This is a request from Doug and Andrea Dahlberg, represented by Brenda Rankin of Territorial Engineering and Surveying, Inc., to create the Shadowridge Addition, a 3 lot summary subdivision of a 5.28 acre parcel. Two lots are proposed at 1.5 acres each and the third lot is proposed at 2.28 acres. The property is located north of the Wye and east of Highway 93, off three roads, two public and one a private driveway. The two public roads are Ladyslipper Lane and Tucker Lane and the private driveway involved is Shadowridge Drive.

The property is unzoned and the Wye-O'Keefe Creek Area Plan recommends a density of 1 dwelling unit per 5 acres. The density of this development is approximately 1 dwelling unit per 1.73 acres. While this does not comply with the Wye-O'Keefe Creek Plan density, it does meet some of the plan's development guidelines.

There are two public roads and one private driveway involved with the proposal. Ladyslipper Lane and Tucker Lane are the public roads and Shadowridge Drive is the private driveway. Ladyslipper Lane is a public road within an 80 foot right-of-way directly east of Highway 93, and continues on until Tucker Lane diverges to the east. Ladyslipper Lane continues to the south to the Spring Meadows Subdivision. Tucker Lane is a 15 foot wide gravel, off-site road within a 30 foot public right-of-way. Since it is less than 500 feet from the nearest publicly maintained paved road, the Subdivision Regulations require paving and widening to a 24 foot width. A variance was requested from the developer. Erik Dickson, County Public Works, felt that adding one driveway to Tucker Lane did not warrant the paving and widening of Tucker Lane. Staff recommends approval of the variance request.

There are two new driveways proposed, one comes off Ladyslipper Lane and the other comes off Tucker Lane. These will serve the 1.5 acre lots. They both meet driveway grade standards. Staff is recommended that the covenants include fire safety related provisions for dead end driveways that exceed 150 feet in length.

Shadowridge Drive provides access to the 2.28 acre lot. The driveway begins within a 30 foot private access easement and actually goes outside of the easement into Montana Rail Link right-of-way, then on the northern end of the property comes back within the 30 foot private access easement. Because physical and legal access differ regarding Shadowridge Drive, staff is recommending that the developer provide proof of legal access across Montana Rail Link right-of-way prior to final plat approval. If this cannot be demonstrated, staff is recommending that Shadowridge Drive be moved so it fits within the 30 foot private access easement.

Walkways are not proposed with the subdivision. The plat contains the waiver of the right to protest a future RSID for improvements to both Tucker Lane and Ladyslipper Lane and the language does include improvements for pedestrian walkways which meets Subdivision Regulations.

Frenchtown Rural Fire Station #7 is directly south of the subdivision, within a couple hundred feet. Frenchtown Rural Fire District is recommending either residential sprinklers in the two new homes or that a 350 gallon per minute water supply be provided for fire fighting. The developer will present additional information on water for fire protection.

The property is fairly open with grasses, a few trees and some knapweed. The Health Department recommended that radon safety language be included in the covenants. The Health Department also commented that the aprons of the two new driveways that front Ladyslipper Lane and Tucker Lane, if they fall within the air stagnation, will have to be paved. Staff is not making a recommendation to that comment as it will be reviewed by the Health Department when the developer comes in for septic permit. In conclusion, staff recommends approval of Shadowridge Addition.

Brenda Rankin, Territorial Engineering, developer's representative, stated that there were no issues with the recommended conditions of approval. The covenants are in the process of being updated to reflect the recommended changes, including the driveways, the radon and residential sprinklers. Tim Wolfe has been in contact with Montana Rail Link regarding the alignment of the driveway. Apparently, MRL does not grant easements, but will grant a permit to use their right-of-way. Tim said that MRL is willing to work with the developer, which will allow the driveway to remain in its current location. Ladyslipper Lane and Tucker Lane run parallel out to Highway 93. Tim Wolfe will contact Public Works to see if that issue can be cleaned up for the future. She thanked Tim Worley for his work on the proposal.

Chairman Evans asked for public comments. There were none.

Commissioner Curtiss asked if Public Works was aware the two roads run parallel and if that can be fixed.

Joe Jedrykowski stated this was the first that he was aware of the situation; however, he felt that something could be done to correct the situation.

Commissioner Carey moved that the Board of County Commissioners approve the variance request to Articles 3-2(3)(B) and 3-2(14)(B) of the Missoula County Subdivision Regulations requiring a paved width of 24 feet for Tucker Lane, based on the findings of fact in the staff report and subject to the recommended conditions of approval. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

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

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

1. The development covenant shall be amended to include the following sections:
  - a. Dead-end driveways in excess of 150 feet in length shall have approved turnarounds for fire apparatus. A turnaround shall be located within 150 feet of the building. A minimum unobstructed width of not less than 20 feet and an unobstructed vertical clearance of 13 feet, 6 inches shall be provided for any driveway over 150 feet. The opening through a gate should be two feet wider than the road. Final design shall be approved through the Frenchtown Rural Fire District. *Subdivision Regulations Article 3-2(10)(E) and Frenchtown Rural Fire District recommendation.*
  - b. Prior to occupying the residences constructed on Lots 2 and 3 within Shadowridge Addition, the developer or purchasers of lots shall: 1) install NFR 13 standard residential fire sprinkling systems in the residences; or 2) provide a 350 gpm water source for fire protection to be reviewed and approved by the Frenchtown Rural Fire District. *Subdivision Regulations Article 3-7(1) and Frenchtown Rural Fire District recommendation.*
  - c. The property owners within the Shadowridge Addition Subdivision are advised that Missoula County has high radon potential and all new construction should incorporate passive radon mitigation systems. *City-County Health Department recommendation.*
2. The developer shall provide proof of legal access for Shadowridge Drive across the Montana Rail Link right-of-way or shall relocate this driveway to the private access easement. *Subdivision Regulations Article 4-1(11)(iv) and County Attorney recommendation.*

#### **Conditions of Approval: Carlton Heights-Maple Creek Addition #2 (Alternate 3) – Postponed from May 26, 2004**

Monte Sipe, Office of Planning and Grants, presented the staff report.

Bruce and Mary Maclay, represented by Nick Kaufman of WGM Group, are requesting that the Board of County Commissioners approve Alternative #4 of Carlton Heights-Maple Creek Addition No. 2 Subdivision, a modified proposal submitted for review for conformance with Alternative #3.

The Missoula Consolidated Planning Board conducted a public hearing on the original request on Tuesday, February 3, 2004 and voted 4 to 3 to recommend denial of the subdivision. Staff's February 3, 2004 recommendation was that the Carlton Heights-Maple Creek Addition No. 2 Subdivision be denied, based on the findings of fact in the staff report.

The original proposal was scheduled for a public hearing at the February 18, 2004 Commissioners Public Meeting. The developer requested an extension at that hearing, which was granted to March 17, 2004, by a vote of 2-0. The Commissioners heard public testimony on the original proposal at this hearing, then recessed the public hearing until the March 17, 2004 extension date.

Alternative #3 of Carlton Height-Maple Creek Addition No. 2, along with the original proposal and Alternative #2, were presented by the developer's representative at the March 17, 2004 meeting. The Board of County Commissioners reconvened the public hearing, heard testimony and discussed the original proposal and the alternatives presented. At the outcome of the March 17, 2004, public meeting, the Commissioners voted 3-0 to support, in principal, Alternative #3 of the Carlton Heights-Maple Creek Addition No. 2 as presented by the developer's representative.

Since that time, the developer has requested several postponements to scheduled hearings and requested extensions to complete further work on the project. The applicant is now presenting what is being referred to as Alternative #4 to the Board of County Commissioners with new findings.

At the Planning Status meeting on Monday, Jim O'Neal presented some of their design concepts that brought them to Alternative #4 and why they feel it complies with, in principal, Alternative #3 approved by the Commissioners back in March. The Request for Commission Action related to Alternative #4 includes six variances and recommended conditions for the Board's consideration. These address a majority of concerns from OPG and legal staff in regard to the most recent submittal. The variances will need action if the Board chooses to approve the subdivision, as well as adopt findings of fact and conclusions of law. Nick has provided some findings based for Alternative #4 in response to staff's original report from February, 2004. In bold are new findings for Alternative #4 that respond to some of staff's concerns that led to denial of the original request.

Nick Kaufman, WGM Group, Inc., developer's representative, stated there were a few things that need to be discussed. The submittal for Alternative #4 has findings of fact presented with the original concerns of OPG and the way they have been addressed with the redesign. A letter was received from Greg Robertson who has no concerns with the modification of the subdivision. Fish, Wildlife and Parks complimented the developer on the fact that over half of the site is now in common area and the potential disturbance has been reduced by creating building site areas on each lot. FWP still says this is an elk calving area, however, biologist Joe Elliot testified to the contrary at previous public meetings. The developer has done everything they could do to address the concerns raised by FWP and mitigate those. A significant concern of OPG with the original proposal was Sun Valley Road does not meet current public right-of-way standards. A variance for Sun Valley Road was granted with the initial Carlton Height-Maple Creek Addition Subdivision. The same variance is being requested with this subdivision. The approval of the variance with the original subdivision should stand for this project as well. Lamar Trail comes off the King Road/Sun Valley Road intersection and winds up to where Maple Creek Road takes off. The Commissioners granted variances for Lamar Trail with the original subdivision, specifically for road grades, but required the road to be widened to 24 feet. The as-builts for Lamar Trail have been reviewed and approved by Public Works. There were also variances granted to Maple Creek Road to exceed an 8% grade and a roadway width from 24 feet to 20 feet with the original subdivision. The only road variance for Addition No. 2 is to keep the 20 foot road width. There is only one on-site variance. All the rest are off-site variances and were reviewed and approved with the original Carlton Heights-Maple Creek subdivision but need to be reviewed and approved for this project. Maple Creek flows from the west to the east through the property. There is an existing identified riparian area which was part of the original subdivision. This request encompasses only one of the lots created with the original subdivision. The Riparian Management Plan has been recorded with the covenants in the filing of the original subdivision. All of the lotted area has been removed from the south-facing slopes – the most critical wildlife slopes – and from the riparian area. The original proposal had the entire 28.31 acres lotted. Now, of the 28.31 acres, 14.38 acres are in common area/open space. A development agreement is being proposed which limits the land uses in that common area/open space to silvicultural uses to reduce fire fuels, to allow non-motorized trail system, emergency motorized access and access for ranch management. Monte has provided some conditions which further clarify that use. The lots have been made smaller and provided building restriction lines on each lot, the largest about an acre and the smallest about a half-acre. The Development Agreement limits use inside those building restriction areas to homes and driveways and limits use on the lots outside of the building restriction areas to just driveways, drainfields, wells and related service lines. Less than 4 acres of the site will be used for buildings. Working with Jim O'Neal, the building sites will blend in with the vegetation. When Alternate #3 was approved in principal, the visibility of the building sites and the location of the driveways had not been taken into consideration. In re-siting the building sites, using and incorporating existing vegetation to screen them has improved the site plan in terms of value and visibility from the valley below. An initial concern with the subdivision was from the Florence Volunteer Fire Department. A letter was provided at the last public hearing stating the well required had been installed and test-flowed at 360 gpm. The Fire Department responded to a wildland fire in this location recently and the roads served them well. Gordon Geiser of the Florence Fire Department had mentioned he would write a letter to that effect, but has been involved with other matters and the letter has not been received. His comments in a phone conversation were that he had no concerns. In conclusion, FWP has a broader concern regarding the Maclay Ranch as elk habitat. The Public Works Department doesn't have any problems with the modifications. The Florence Rural Fire Department has no concerns. The Development Agreement has been modified; the proposal includes over 50% common area, to reduce the disturbance area and the building sites; and the road has been moved almost 200 feet back from its previous locations to reduce impacts to the riparian area. The subdivision in its revised state is worthy of approval in conformance with the Growth Policy and the Subdivision Regulations.

Commissioner Carey stated that Nick and his team have done a good job in mitigating the concerns and making it an attractive subdivision. He asked if the developer has a way to influence the kind of house that may be built.

Nick Kaufman stated the existing covenants for this subdivision have architectural review. The developer has the right to review all architectural plans. An outbuilding close to this subdivision, but off-site, was constructed a little differently than was expected. The owner of the property was required to install over \$1,600 worth of evergreen trees to help screen the building.

Commissioner Curtiss asked about the variance for reduced right-of-way width on Sun Valley Road.

Monte Sipe stated that Sun Valley Road is only 30 feet in right-of-way width and the actual surface width varies from 18 feet to 26 feet. There has been difficulty acquiring the additional right-of-way easements from adjoining property owners. This issue is prevalent throughout the Carlton area. The reduced right-of-way width creates difficulties in constructing a road that complies with Subdivision Regulations.

Nick Kaufman stated that to help mitigate that concern, there is another access further south from King Road and Carlton Creek Road. Mr. Maclay has prepared engineering plans that have been reviewed and approved by Public Works that would connect Lamar Trail to McClain Creek Road.

Commissioner Curtiss asked if that was included in the findings of fact.

Colleen Dowdall stated it is included in the revisions that Nick has prepared. When the findings of fact are drafted, that pertinent information will be included.

Commissioner Curtiss asked how the Board should proceed with adoption of findings.

Colleen Dowdall stated that the motion should say that the Board's decision is based upon the findings of fact to be drafted later that reflect the testimony and the information that supports adoption of Alternate #4.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations to allow for a reduced road width from 24 feet to 18-26 feet, a reduced right-of-way width from 60 feet to 30 feet and to exceed the maximum grade of 8 percent for Sun Valley Road, based on the findings of fact. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(1)(I) of the Missoula County Subdivision Regulations to allow a reduced road width from 24 feet to 20 feet for Maple Creek Road, based on the findings of fact. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(1)(I)(i) of the Missoula County Subdivision Regulations to allow the Maple Creek Road cul-de-sac to exceed 1,000 feet in length to a length of 4,308 feet, based on the findings of fact. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(1)(I) of the Missoula County Subdivision Regulations to allow for the maximum road grade to exceed 8 percent for the off-site portion of Maple Creek Road, based on the findings of fact. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(1)(I) of the Missoula County Subdivision Regulations to allow for the maximum road grade to exceed 8 percent for Lamar Trail South, based on the findings of fact. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the Carlton Heights-Maple Creek Addition No. 2 Subdivision – Alternate #4 – based on the findings of fact which will be substantiated by the staff report, comments from the developer's representative, agency comments and public testimony, subject to the conditions in the Request for Commission Action from Monte Sipe dated June 16, 2004. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Carlton Heights-Maple Creek Addition No. 2 Subdivision – Alternate #4 – Conditions of Approval:**

1. The revised set of construction plans for the Maple Creek roadway extension shall be reviewed and approved by County Public Works prior to final plat approval. *Subdivision Regulations Article 3-2(1)(J) and Public Works recommendation.*
2. The Non-Motorized and Emergency Access Easement (NMEAE) shown on the preliminary plat shall be amended to state "Emergency Access Easement (EAE)" on the final plat, subject to OPG review and approval prior to final plat approval. *Subdivision Regulations Article 3-2(1)(E) and OPG recommendation.*
3. The Riparian Resource Area shall be delineated on the final plat and labeled "Riparian Resource Area – No Improvement Zone," subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-13(4)(B) and OPG recommendation.*
4. The approved building restriction lines for each lot shall be clearly defined on-site by staking prior to final plat approval. An exhibit showing a center survey point or other monumentation of each lot building restriction area shall be attached to the covenants and referred to in the section describing the "Building Envelope." A note shall be placed on the face of the final plat stating, "Building Envelopes have been designated for each lot within this subdivision, no structures are permitted outside of these designated areas, see exhibit in covenants." The requirements of this condition are subject to OPG review and approval prior to final plat approval. *Subdivision Regulations Article 3-1(2), 3-1(5), 3-1(9) and OPG recommendation.*
5. A turnaround on Maple Creek Road shall be reviewed and approved by the Florence Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-2(1)(I) and OPG recommendation.*
6. The Florence Rural Fire District shall review and approve the design of driveways in excess of 150 feet in length prior to construction of any residence. This requirement shall be referenced in the covenants, subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-2(10)(E) and OPG recommendation.*
7. Residential sprinkler systems meeting NFPA requirements shall be installed in all homes and for which plans are subject to review and approval by Florence Rural/Missoula Rural Fire District. The requirement for Florence Rural/Missoula Rural Fire District approved residential sprinkler systems in all homes shall be noted on the face of the final plat, subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-1(2), 3-7 and OPG recommendation.*
8. A Revegetation Plan for disturbed sites shall be reviewed and approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and County Weed Board recommendation.*
9. The Riparian Resource Management Plan attached to the recorded covenants for Carlton Heights-Maple Creek Addition shall be modified as follows and attached to the covenants pertinent to the Carlton Heights-Maple Creek Addition No. 2 approved subdivision:

- Remove the last sentence of paragraph #1 – “Future road and driveway ... for crossing the riparian area.”
  - Remove the second sentence in paragraph #2 – “No disturbance ... driveway crossings (see road construction guidelines).”
  - Modify paragraph #3 – stating “No livestock is permitted in the designated riparian areas.”
  - Delete paragraph #6 – stating “Existing ranch roads will be limited to ranch vehicles and for ranching purposes only.”
  - Delete paragraph #7 – delete the entire “Road and Driveway Construction Guide” section. *Subdivision Regulations Article 3-14 and OPG recommendation.*
10. The submitted development agreement shall be modified to be consistent with approval of Alternate #4, subject to OPG and County Attorney review and approval, prior to final plat approval, and shall address the following:
- Under B. #2 Riparian Areas. The last sentence shall be modified to state: “No disturbance of riparian area vegetation and the associated stream channel is permitted, except for necessary and required vegetation fuel reduction measures for fire mitigation and trail maintenance.”
  - Under B. #3 Wildlife Habitat. A sentence shall be added stating: “No livestock or grazing is permitted in the Common Areas.”
  - Under C. ACCESS. The sentence shall be modified to state: “No lot, any portion of a lot, or the designated common areas, shall be used to provide motorized access to any other lot or adjoining lot or parcel of land, except for the approved Maple Creek Road access shown on the final plat for Carlton Heights-Maple Creek Addition No. 2.”
  - Under H. WILDLAND/RESIDENTIAL INTERFACE. The title shall be corrected to state “WILDLAND” and a section shall be added to state: “Where Wildland/Residential Interface and Riparian Management sections or standards are in conflict, the Riparian standards shall apply. This provision is specifically directed toward vegetation removal on the downslope side of Lots 2 and 3.” *Subdivision Regulations Article 3-14, 3-8(7), 3-8(8) and OPG recommendation.*

#### Other Business

Craig Kaprayra, HDR Engineering, stated his firm is doing the construction administration on the Mullan Road Sewer Project. He has change order #7 and pay request #12 that have been signed by Greg Robertson. They also require Commission approval, which he is requesting from the Board.

Chairman Evans stated those types of items are typically included on the Commissioners Administrative Meeting agenda thereby meeting the open meeting rules. He should give the requests to the secretary so she can include them on the agenda for tomorrow morning's meeting.

Joe Jedrykowski, County Engineer, stated that a few weeks ago the Board of County Commissioners awarded a contract to Bodell Construction for the renovation of the Van Buren Street Pedestrian Bridge. The contract, performance bond and insurance have been received and the contract is ready for signature. He will have the item included on the agenda for tomorrow morning's Administrative meeting.

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

#### THURSDAY, JUNE 17, 2004

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 Curtiss signed the Claims List, dated June 16, 2004, with a grand total of \$2,123.49. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 16, 2004, with a grand total of \$276,777.36. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated June 17, 2004, with a grand total of \$17,733.33. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Kathy Jackson-Gratton, Billings, as Principal for Clerk of Court Warrant #19613, issued June 7, 2004 on the Missoula County Trust Fund in the amount of \$970.00 (for child support), which cannot be found.

#### ADMINISTRATIVE MEETING

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

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 12 – CY2004 - Pay Date: June 11, 2004. Total Missoula County Payroll: \$910,756.84. The Transmittal Sheet was returned to the Auditor's Office.

Letter – Commissioner Evans signed a letter, dated May 26, 2004 to Dr. Mark Baumler, State Historic Preservation Officer, Montana Historical Society, Helena, waiving her right to comment on the Doyle Convalescent Home, 228 Eddy Avenue, Missoula, which is a proposed listing for the National Register of Historic Places. The letter was forwarded to Dr. Baumler in Helena.

Board Appointments – The Commissioners approved and signed three (3) letters, dated June 21, 2004 reflecting the reappointments to three-year terms as members of the Missoula County Park Board to 1) Jim Dayton, Piltzville; 2) Sue Brown, Missoula; and 3) Ed Heilman, Missoula. Their new terms will run through June 30, 2007. The Commissioners also signed a letter appointing Dan Morgan, Missoula, as the “1<sup>st</sup> Alternate” member. Mr. Morgan’s term will run through June 30, 2005.

Modification – Chairman Evans signed Modification #1, dated June 17, 2004 to Calendar Year 2004 Financial and Operating Plan of the Cooperative Law Enforcement Agreement #01-LE-11011600-016 between the Missoula County Sheriff’s Department and the USDA Forest Service, Lolo National Forest. Modifications include the following: 1) Alternate representatives: Don Carroll Missoula District Ranger changed to District Ranger to reflect the current vacancy; 2) Special Enforcement Situations: Changed to include reimbursement for the rededication of Aerial Fire Depot ceremony; and 3) Cooperative Funding Distribution: \$6,000 added for Group Gatherings, and Total available is \$32,000 (formerly \$26,000). All other terms and conditions are unchanged. The document was returned to the Forest Service for further signatures and handling.

Other items included:

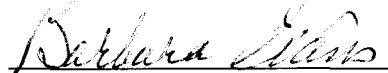
- 1) The Commissioners reviewed and approved the County Park Board recommendation to hire Horizon Tree Service to perform forest rehabilitation/fire mitigation work (Mechanical Treatment Project) in Ravenwood Park. The total cost for the project will be \$8,500.00. County Parks Coordinator Lisa Moisey will prepare a contract.
- 2) The Commissioners reviewed a memorandum from the Montana Community Development Corporation regarding appointments to the governing group of the Certified Regional Development Corporation. Commissioner Curtiss will contact a person who may be interested in serving on this governing group.

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

#### FRIDAY, JUNE 18, 2004

The Board of County Commissioners did not meet in regular session. Commissioners Curtiss and Evans were out of the office all day; Commissioner Carey traveled to Kalispell to attend a meeting of the Mental Health Board.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

#### MONDAY, JUNE 21, 2004

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

Claims List – The Commissioners signed the Claims List, dated June 16, 2004, with a grand total of \$17,461.27. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed four (4) Claims Lists, dated June 18, 2004, with the following grand totals:

- 1) \$3,149.44;
- 2) \$7,026.67;
- 3) \$177.70; and
- 4) \$46,899.33.

The Claims Lists were returned to the Accounting Department.

Agreement – Chairman Evans signed a Memorandum of Agreement, dated May 25, 2004 between the Missoula County Park Board (the “Board”) and Backwoods BMX for assistance with park development. The Board agrees to provide up to \$3,000 in matching funds from the Capital Matching Fund Program (Spring FY04), and must be spent by May 30, 2006. The document was returned to Lisa Moisey, County Parks Coordinator, for further handling.

Resolution No. 2004-085 – The Commissioners signed Resolution No. 2004-085, dated June 21, 2004 a resolution to alter Remount Road, located in Section 28, T 15 N, R 22 W, from the Southern boundary of the NE¼ NW¼ of Section 28, to the Northern boundary as described in Book 450 Micro page 2001, because the existing traveled road does not coincide with position shown on Deed Exhibit \$59.

Resolution No. 2004-086 – The Commissioners signed Resolution No. 2004-086, dated June 21, 2004 a resolution to abandon road right-of-ways of No-Name Roads within Department of Natural Resources and Conservation (“DNRC”) property from North Avenue to Spurgin Road more particularly described as those road right-of-way easements within the lands of the DNRC situate in Section 30, T 13 N, R 19 W, PMM, Missoula County, as described in Commissioner’s Journal Book P, on page 558, bound by the southerly right-of-way line of Spurgin Road on the north, the northerly right-of-way line of North Avenue to the south, and the Easterly line of the NE¼ of the SW¼ of said Section 30 to the East, due to the establishment of the Veteran’s Cemetery.

## TUESDAY, JUNE 22, 2004

The Board of County Commissioners met in regular session; all three members were present. At noon, Commissioner Carey attended the 50<sup>th</sup> Anniversary Open House at Roscoe Steel & Culvert; later in the afternoon he attended a Travelers Rest Board Meeting in Lolo. In the evening, Commissioner Evans attended a Public Meeting regarding Alternatives for Miller Creek Road; the meeting was held at the Best Inn on Brooks Street. Commissioner Curtiss attended a meeting of the Milltown Redevelopment Working Group; the meeting was held at Our Savior's Lutheran Church in Bonner.

Claims List – The Commissioners signed the Claims List, dated June 16, 2004, with a grand total of \$7,635.10. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 17, 2004, with a grand total of \$63,101.21. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed three (3) Claims Lists, dated June 21, 2004, with the following grand totals:

- 1) \$34,655.66;
- 2) \$3,373.75; and
- 3) \$14,463.96.

The Claims Lists were returned to the Accounting Department.

Claims List – Commissioners Evans and Curtiss signed the Claims List, dated June 22, 2004, with a grand total of \$525.00. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

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

Budget Transfer – The Commissioners signed Budget Transfer Control No. 04-030 for the Weed Department, reflecting \$7,900 in a transfer from Weed to Extension to cover expenses for an Extension employee who works on projects for the Weed Department.

Agreement – The Commissioners signed an annual Agreement between the Missoula City-County Health Department and the Frenchtown School District for the provision of a Public Health Nurse for the 2004-2005 school year (effective August 2004 through June 2005). The total amount shall not exceed \$54,468.37. All other terms and conditions are set forth therein.

Contracts – The Commissioners signed three (3) Professional Services Contracts between the Partnership Health Center and the following for provision of Ryan White III Early Intervention Services: 1) Lewis and Clark City-County Health Department, in the amount of \$5,000; 2) Flathead City-County Health Department, in the amount of \$10,000; and 3) Butte Silver-Bow Health Department, in the amount of \$5,000. The term for all three contracts is April 1, 2004 through March 31, 2005. All other terms and conditions are set forth therein.

Resolution No. 2004-087 – The Commissioners signed Resolution No. 2004-087, dated June 22, 2004, a Budget Amendment for the Health/County Attorney Departments reflecting \$2,200 in financial support for the County Attorney's Office for prosecution services from the DUI Task Force (pursuant to a Memorandum of Agreement, dated May 25, 2004 between the Missoula City-County Health Department and the Missoula County Attorney's Office). For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Extension Request – The Commissioners approved and signed a letter, dated June 22, 2004 to Becky Weaver, Professional Consultants, Inc., approving her request for a one-year extension of the final plat approval deadline for the Langel Addition Subdivision. The new deadline will be July 23, 2005.

Request for Action – The Commissioners approved the Emergency Services 2004 Fire Restrictions Plan (mitigation and restrictions) regarding wildland fire issues, and authorized Missoula County Fire Warden Scott Waldron to sign the Plan.

Resolution No. 2004-088 – The Commissioners signed Resolution No. 2004-099, dated June 22, 2004 a resolution to amend Resolution No. 2002-117, "Missoula County Floodplain Regulations" as adopted on June 9, 2004. Amended is Section 5.02 regarding substantial improvements to any legal non-conforming structures, as set forth therein.

Request for Action – The Commissioners approved, and Chairman Evans signed, the Missoula County WMD Strategic Plan, dated June 22, 2004. The Plan enables the County to be eligible for US DOJ Homeland Security grants, and creates no new commitment for local funding. The Plan will be submitted to the State of Montana Disaster and Emergency Services.

Other items included:

- 1) The Commissioners approved for Justice Court #1 the purchase of five LCD computer monitors with funds from the Bond Forfeiture revenue. The Court will submit a Budget Enhancement for signature.
- 2) The Commissioners moved to have Chief Civil Attorney Mike Sehestedt review before adopting the FY 2005 Fee & Rate Adjustments for the Sheriff's Department.

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



## WEDNESDAY, JUNE 23, 2004

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Carey was out of the office from the 23<sup>rd</sup> through the 25<sup>th</sup>. In the evening, the Commissioners and County staff members conducted a Public Discussion regarding the proposed Code Enforcement Program for Missoula County; the meeting was held at the Clinton Community Center.

Claims Lists – Commissioners Evans and Curtiss signed three (3) Claims Lists, dated June 22, 2004, with the following grand totals:

- 1) \$38,650.02;
- 2) \$91,857.91; and
- 3) \$13,053.48.

The Claims Lists were returned to the Accounting Department.

Claims List – Commissioners Evans and Curtiss signed the Claims List, dated June 23, 2004, with a grand total of \$9,136.36. The Claims List was returned to the Accounting Department.

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming David Read, Missoula, as applicant for Accounting Warrant #42443, issued June 10, 2004 on the Missoula County 2300 Fund in the amount of \$331.97 (for supplies), which was not received in the mail. No bond of indemnity is required.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

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

Request for Action – Chairman Evans signed forms and certifications for three (3) HUD renewal projects to address homelessness, as follows: 1) Application to contract with Western Montana Mental Health Center/Turning Point for SHARE House, a detox and transitional housing program for people who are homeless and chemically dependant and/or dually diagnosed; 2) and 3) Applications to contract with the YWCA for the Ada Feldman and March Against Homelessness projects, a transitional housing program for women and their families, most of whom are homeless due to domestic violence.

The forms signed were: 1) Applications for Federal Assistance, 2) Special Project Certifications (Discharge Policy, Coordination and Integration of Mainstream Programs), 3) Certification Regarding Disbarment and Suspension, 4) Applicant/Recipient Disclosure/Update Report. If funded, HUD will grant Missoula County \$399,330 for two years (or \$196,665 for one year) the SHARE House project; \$35,240 for one year of the March Against Homelessness Project; and \$65,761 for one year of the Ada Feldman Project. The documents were returned to Kristina Swanson at the Office of Planning and Grants for further handling.

Other items included:

- 1) The Commissioners approved a draft letter requested by the Missoula County Airport to complete an Environmental Assessment Study at the Airport.
- 2) Per recommendation of Hal Luttschwager, County Risk Manager, the Commissioners approved and authorized increasing the deductible for excess liability insurance (general liability, auto liability and public officials' liability) from \$800,000 to \$1,000,000, due to a very large increase in premiums (59%).
- 3) The Commissioners discussed and moved to meet with Public Works Director Greg Robertson, Long Range Planning, and Loren Frazier regarding the access off of Airway Boulevard and Expressway.

#### PUBLIC MEETING – June 23, 2004

The Public Meeting was called to order at 1:30 p.m. by Commissioner Barbara Evans. Also present were Commissioner Jean Curtiss, Chief Civil Deputy County Attorney Mike Sehestedt, County Engineer Joe Jedrykowski and County Public Works Assistant Director Chuck Wright. Commissioner Bill Carey was on vacation.

#### Pledge of Allegiance

#### Public Comment

None

#### Routine Administrative Actions

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$698,351.04. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

#### Hearing: Issuance of Revenue Bonds to Finance Headquarters Facility for the Rocky Mountain Elk Foundation, Inc.

Mike Sehestedt presented the staff report.

The Rocky Mountain Elk Foundation has requested the County issue Industrial Development Revenue (IDR) Bonds, in an aggregate amount not to exceed \$10,000,000. This is a two series issue; the first \$5,000,000 would be issued in the near term and the balance might be issued in the next calendar year, either in whole or in part. The purpose is to help defray a portion of the cost of constructing their new Headquarters complex. The Bonds are being issued through the State IDR

Bond act. They are secured solely by the project and revenues of the Rocky Mountain Elk Foundation. The Bonds will not constitute a claim against the County. The security for the lender is no greater with this kind of financing, but the interest is tax exempt, which provides an advantage to the borrower.

Ben Johnson stated he was with the law firm of Kennedy and Graven who are acting as bond counsel on this transaction. They are drafting all the documents and writing the opinion that says the bonds are exempt from State and Federal income tax. These bonds do not constitute an obligation by the County. The Elk Foundation is a strong organization, but if there were any payment problems in the future, it would in no way affect the credit rating of the County with any credit rating agencies. Several representatives for the Rocky Mountain Elk Foundation are present today who will also speak to this issue. The project is very nice and will bring jobs to the area and improve a good organization. The Rocky Mountain Elk Foundation is a non-profit 501(c)(3) organization under Federal tax law. 501(c)(3) organizations have the ability to borrow on a tax exempt basis for capital needs. Under State law, building projects such as a headquarters facility for a non-profit, hospitals, senior housing, etc., can be financed through a County or a City. The County acts as a conduit and because the note is issued from the County, it is exempt from tax. That lowers the borrowing cost to the non-profit organization. That is the sole reason for the RMEF to ask the assistance of the County. In this case, they are asking for up to \$5,000,000 of bonds through the County, which will be deemed as bank qualified, which means banks are able to buy them and get extra deductions, which lowers the borrowing costs even further. The proposal is for the County to use \$5 million of its \$10 million limit on bank qualified bonds. There is a provision in the bond documents that if there any unexpected borrowing needs of the County and they are pushed out of bank qualification for the rest of the calendar year, the Rocky Mountain Elk Foundation would reimburse the County for any loss. It is financing mechanism that is allowed under Federal and State laws.

Jay Dart, President and CEO of the Rocky Mountain Elk Foundation, stated they do not anticipate adding any new staff right away. They organization is growing and this facility will be the new home for the office, a distribution center and a visitor's center. They hope the visitor's center will attract upwards of 100,000 visitors a year. They are a responsible, growing business and over time, staff will be added as the business grows.

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

Commissioner Curtiss moved that the Board of County Commissioners approve issuing Industrial Development Revenue Bonds to help defray a portion of the cost of constructing the new headquarters for the Rocky Mountain Elk Foundation, based on the fact that it appears to be in the public interest to do so, and authorize the Chair to sign all related documentation. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

**Hearing: Petition to Establish a Portion of Queen Anne Lane as a County Road**

Greg Martinsen, Martinsen Surveys, presented the request.

This is a petition to establish a portion of that certain County road, specifically described as Queen Anne Lane, located in the Southeast one-quarter of Section 10, the Southwest one-quarter of Section 11, the Northwest one-quarter of Section 14 and the Northeast one-quarter of Section 15, Township 11 North, Range 20 West, principal Meridian, Montana, Missoula County, Montana. From the projected North boundary line of Lot 8 of Mackintosh Manor, Southerly and 30.00 feet both sides of the Section line common to Sections 10 and 11 and the Section line common to Sections 14 and 15 approximately 2,960.05 feet to the projected East-West mid-section line of Section 15. (See attached "QUEEN ANNE LANE EXHIBIT.")

The reasons for the request are as follows:

1. As a public roadway, Queen Anne Lane would provide "legal and physical access" to all of the lands and owners thereof affected by this establishment.
2. As a public roadway, Queen Ann Lane would be eligible to utilize public funding and bonding for improvements and/or maintenance. This could be done through the creation of a Rural Special Improvement District (RSID) to provide funding to construct the road to county standards so Missoula County would accept the road for regular County Road maintenance. All of the landowners who use this road would share in the costs and benefits of the RSID. The eventual expense, in the future, of this method is far less than what could be expected by any other option and Queen Anne Lane becomes a County road.

The following landowners have been notified:

Robert E. Vacek and Patsy Merritt-Vacek	Maclay Ranch Partnership	John M. Dwyer and Colleen R. Dwyer
Jerold A. Johnson and Judy C. Johnson	Stephen A. Stoll and Jane Kelly Stoll	Brian B. Potter and Janice E. Potter
David A. Dufresne and Shelia V. Dufresne	John Mandell and Cindy Mandell	Martin G. Moss
Scott Louis Kappes and Deana L. Kappes	Joseph W. Cotchett and Victoria E. Cotchett	Dominic L. Mahan and Michelle Mahan
Lyle Wilkinson	Gregory L. Brown and Brenda D. Brown	Daniel Wayne Cruson and Dawn Cruson
Timothy D. Petersen and Barbara M. Petersen	Alex V. Hamilton and Debra L. Hamilton	William L. Rogers and Merritt K. Rogers
Mary Kathleen Moe	Gary D. Richtmyer and Susan M. Richtmyer	Randall A. Pryhoricki and Kim Pryhoricki
Robert N. Sanchelli and Janiel A. Sanchelli		

This is the same situation that existed on Rowan Street, which the Board addressed and approved recently. The petition is being presented in order to get legal and physical access on Queen Anne Lane.

Joe Jedrykowski stated the signatures on the petition are from property owners on the west side of the road. He asked about the 13 properties on the east side of the road.

Greg Martinsen stated they were all mailed a copy of the petition. He knew of two who said they would sign and return the petition, but apparently never got around to it. The law requires the signatures of 10 freeholders in the road district, which encompasses the whole County. It doesn't specify it has to be people who adjoin the road.

Joe Jedrykowski stated there is a provision that an RSID could be formed and that the road could be reconstructed to County standards. Are there any plans to do that?

Greg Martinsen stated there were no plans to do that on either the County's part or the petitioner's part.

Chairman Evans asked for an explanation of why this was being petitioned to become a County road with no maintenance.

Greg Martinsen stated it was to make this a County right-of-way. It is required because subdivisions require legal and physical access. Legal access is a 60 foot wide County right-of-way. There is also a question from title companies about policies written.

Chairman Evans stated that Rowan Road (Street) was approved because residents needed that designation to provide legal access to their properties.

Greg Martinsen stated that Queen Anne Lane presently is a 20 foot wide County right-of-way, with a 30 foot private access and public utility easement adjacent to the east and a 10 foot wide private access and public utility easement adjacent to the west. The petition is to take the existing private easements and put them together with the public right-of-way and designate the entire 60 feet as a County right-of-way.

Chuck Wright stated that he also was wondering if an RSID was going to be proposed. The road is quite narrow.

Chairman Evans opened the public hearing.

Robert Sanchelli stated he lived on Queen Anne Lane. There are a lot of people using this private access beyond those who live there. Mr. Maclay has put in a new road, Ray Lane, for a subdivision he is doing and that road is private. It is built to County standards and paved. He did not know if there was any intention to make it a public right-of-way. The one thing that is not needed is a lot more traffic on Queen Anne Lane than what they have now. He is opposed to making this all a County right-of-way.

Commissioner Curtiss stated that Mr. Sanchelli lived on Queen Anne Lane to the south. She asked if Ray Lane connects to Queen Anne at some point.

Robert Sanchelli stated that Queen Anne Lane continues to the south onto the Maclay Ranch. Ray Lane comes up from Trader's Brothers. There is no reason for public access in this area. He believes there is an easement and there was also an easement on Dundee Lane and Folsom Lane. Queen Anne Lane runs north and south, parallel with Rowan Road.

Mike Sehestedt stated that where Rowan Road meets Queen Anne Lane, there is a public road 20 feet wide from the Orchard Tracts platting, that runs along the center section line. The request is to combine the private accesses and the public access and make it one County right-of-way. No new easements are being requested. The petition is to expand the public right-of-way to 60 feet, there would be no damages or taking as the expansion takes in existing private easements.

Robert Sanchelli stated that when he bought his land, he was able to close without having a road maintenance agreement because Queen Anne Lane is an abandoned County road with 60 feet of right-of-way but 30 feet of that is private. He did not believe the County needs to have this right-of-way.

Susan Richtmyer stated she owns private land that adjoins Queen Anne Lane. She is opposed to this becoming a County road for several reasons. The first concern is for public health. Queen Anne Lane is a very narrow dirt road and serves a limited number of people. The road can handle the traffic it currently has. There may be people whose health conditions would worsen with increased traffic and dust. She is not opposed to development and physical and legal access already exist. Another concern is the cumulative effect of traffic on the roads in this area and the trend of making these roads public, one after the other. This is unregulated, piece meal development. She is looking at the broader picture of what roads need to be public and what roads should stay private. With Rowan Road being public, she is paying for the maintenance of it. The private land owners continue to maintain their own roads while continuing to open them up to the potential for increased traffic. She does not think a good case has been made as to why this should be a public road. Development and access can be accommodated under the present conditions. Why is the County willing to accept this road into the public road system without a better need than has been presented today. What are the benefits to adjacent land owners if the road is declared public. Who will pay for the increased usage. What is the intent of turning this into a public road and what will be gained. It seems that Mackintosh Manor is being singled out. There is development all over the Missoula area but only Mackintosh Manor is seeing these small access roads being taken over by the County. What is the expectation for the public road infrastructure. Is there a comprehensive plan for these roads, why are these roads being put under public jurisdiction. There seems to be a trend in this area. Rowan Road was a completely different circumstance. She would like to suggest there be a more comprehensive, well thought out plan for the Mackintosh Manor area. Development will occur and a plan should be drafted to deal with all the roads rather than making one small road after another public. She would be willing to join in on such a public discussion. She would like Missoula County to be responsible with public infrastructure.

Jerold Johnson, 16125 Queen Anne Lane, stated he was in favor of this becoming a public right-of-way. If the road is ever widened to the west, it would take out his drainfield. If it is dedicated the way it exists now, it won't affect his property. If the 30 additional feet needs to be taken from the west, it will bring it right in front of his house.

Rob Vacek, 15910 Dundee Road, stated he was present during the arguments for Rowan Road and heard many of the same pros and cons; the people along the road don't want more dust and don't want public access encroaching on their private property. People are moving into Montana and there is nothing that can be done about that. Compared to other parts of the country, land is still affordable and provides the life style that people want. This brings families, money and jobs to the area. Some of the residents on Queen Anne Lane, if they try to sell their house in a few years, may have problems without 100% legal County access to their property. Right now, everything on the east side of Queen Anne Lane belongs to each adjacent property owner and the other half is a County road. That creates an awkward situation. There is not a lot of traffic on Queen Anne Lane, it is typically used by only those who live along it. The folks who say they are not opposed to subdivision but are against letting the County take over Queen Anne Lane seemed to speaking on both sides. He is subdividing 5 acres of his land and would like to sell it someday. The smallest pieces of land are maybe one or two acres and higher in the hills are 5 to 20 acre parcels. This is not like having a subdivision in town where the houses are right next to each other. There are not a lot of people in this area. He is in favor of making this a County road. A substance was put down on Rowan Road which does a good job of keeping the dust down.

Kim Erickson stated that she owned property on the east side of Queen Anne Lane. She is opposed to making Queen Anne Lane a public access. Many of her points have already been made. One of her concerns is Queen Anne Lane runs north and south and is private. There is property to the north and south that will eventually be subdivided. There are rumors galore floating around that it will be a game preserve or 10 acre parcels or cluster homes. One of the biggest concerns is that the area will be opened up to greater traffic. Mag chloride was just applied to the road. The current Homeowners Association dues allow the road to be minimally maintained. At certain times of the years, it is a potholed mess. As traffic increases, maintenance costs go up. Each new house brings in two or more cars. The greater issue is that the covenants allow for division down to one acre parcels. It must be assumed that not everyone wants to maintain their 10 or 20 acres. An out of state property owner may want to divide into one acre parcels for the financial gains and the covenants cannot protect against that happening. They would like to have some discussions about future planning for the entire area before the road is opened to the public. She feels a lot of things have happened without any public dialogue. She does not feel there is protection from all of the related issues to this one small item.

Dan Cruson, 16170 Queen Anne Lane, stated he moved to the area in 1995 because of the country setting. He is opposed to making this a public access. He can see the neighbors point of view. His parcel is to the east so it is smaller and the parcels to the west are larger. It is probably a good time to sell off part of it and if he lived there he would probably want to do the same. He has invested quite a bit in landscaping to make his parcel attractive. Recently, there was quite a bit of rain and the road became quite potholed. He spent some of his time and money filling in those potholes. Others were skirting the road to avoid the potholes and encroaching into his landscaping so they could travel at a speed beyond the posted limit. This is really self-serving. He is not opposed to growth in the area. If the public would like to pave the road, he would support that. Currently, this request will just add more traffic. The wind blows toward his home and brings much of the dust with it. He has spent his own money to apply dust control each year. If the County wants to invest money to do the road right, he would support that, otherwise he is opposed to making it a County right-of-way.

Commissioner Curtiss asked if this was a petition to accept the road and have it paved and brought to County standards, would he be in favor of that.

Dan Cruson stated he would be in favor of that, and of paying his fair share.

Jane Stoll, 6720 Rowan Road, stated that part of her property borders Queen Anne Lane. She is in favor of having it a dedicated County road. All of Mackintosh Manor has dedicated County roads and the only piece that is half private and half public is Queen Anne Lane. On either end, Queen Anne Lane does not connect to any other road so allowing this would not cause a lot of extra traffic. If people are opposed to development in the area, they should be making their comments through the subdivision process. She asked the Commissioners to grant the petition and make this a County road.

Mary Kathleen Moe, 16620 Queen Anne Lane, stated she purchased her property in 1992. It is a nice neighborhood. She lives in the last house on the left on the south side of Queen Anne Lane. All these years, the only traffic was a herd of cows passing by from time to time. Ray Lane is parallel to her property and is a very nice, paved road, but most Friday and Saturday nights, teenagers race up and down the road. Queen Anne Lane does not currently connect to Ray Lane, but it could be done easily. The people who live there now have access. She has refinanced her house a couple of times and has had no problems with mortgage or title companies saying she did not have legal or physical access. She sees no reason to do this. All the land owners are maintaining and getting to their properties just fine. She lives on the east side and has landscaping that would be destroyed if this was enlarged. It is comforting to know her kids could play without any traffic racing by. Dust is a concern and many people have health issues connected with that. Anytime a road is made wider, it invites people to use the area. It is private and should only be accessible by the landowners. There isn't a lot of room or a need for an expanded road. She works at night and sleeps during the day and added traffic would be burdensome. She also provides the family's only income and an RSID would be a burden. She would hate to have to move out of the neighborhood she has come to love.

Brian Potter, Lot 14 of Mackintosh Manor, stated that his property is adjacent to Dundee Road and Queen Anne Lane. He is opposed to this petition. It is not necessary to make changes to this road. A lot of other reasons have been given, but it boils down to someone wanting to develop their land. If it is his neighbors that want to develop, that is acceptable, but much of this has been brought about by individuals whose concern is not the neighborhood, it is for their own financial gain. He is opposed to that. When this is done by individuals who have the financial resources the neighbors don't have, he is opposed. People should work as a neighborhood to make improvements to the road, but this is being requested by outside interests. He lives in the worst section of Mackintosh Manor as far as dust is concerned. Mag chloride has been applied to the road, but as a result, some trees and landscaping have died. Increased traffic will make it necessary for more mag chloride, possibly resulting in the loss of more landscaping. After a recent grading, the road was in very good shape, but in one or two weeks it had deteriorated due to construction traffic from just one house being built. This road is

steep and cannot handle traffic like a flat road. Again, he is against this petition; the road handles the current traffic just fine.

Steve Stoll, 6720 Rowan Road, stated he is in favor of this being a County road. A lot of legitimate issues have been raised, but the bottom line is legal access. This is the only road where legal access is a question, it is the only road in the whole subdivision that has part private and part County right-of-way. He has talked with a lawyer and there are issues with legal access in any kind of land transaction. That is where the focus needs to be. All the other problems are not a credible basis to make a decision, the legal access issue should be the main focus.

Judy Johnson stated she lived across the street from Dan Cruson and he is a wonderful neighbor with a fabulous yard. She owns Lot 10 on the west side of the road and is in favor of the petition. She has a right to legal access and physical access to her home, for traveling to and from and to sell the land and home. She is not in favor of an RSID. She was raised in the country and is used to the dust. The traffic should not increase on Queen Anne Lane. Some of the people on the east side may be worried about the dedicated right-of-way because of landscaping in the right-of-way. She is in favor of this becoming a dedicated County road.

Greg Martinsen stated that the road as it exists is half and half, half private and half public. The Dwyer Addition approved last summer, was required to give 40 additional feet of their property for right-of-way in addition to the 20 feet that currently exists. That is not a fair and equitable situation that the people on one side should have to give all the right-of-way for a roadway that is being used by people on both sides of the road. The planning staff suggested initiation of this process in order to make the road the correct width as required by regulations and give a fair share to everyone on the road. If the Johnson's are required to dedicate additional right-of-way on their property, it will be within 5 feet of their house and will remove their drainfield. There was the understanding when they built their home that people on both sides of the road would be treated fairly and equitably and be given the same amount of right-of-way. That is one reason why the Dwyer Addition has not been filed yet. Mackintosh Manor was platted as a subdivision in 1909.

Mike Sehestedt stated it was one of the old Orchard Tracts. The roads were platted at 20 feet, which was adequate at the time of platting, maybe for horse and buggy.

Greg Martinsen stated it was filed as a subdivision and the roads were dedicated. Rowan Street, Dundee Road and Highland and one other road were all 40 foot wide right-of-ways. Queen Anne was the only one platted at 20 feet.

Commissioner Curtiss asked how wide the existing road was?

Greg Martinsen stated the road varies between 17 and 20 feet wide.

Commissioner Curtiss asked if the road was on both the County right-of-way and the private right-of-way.

Greg Martinsen stated it is currently on both rights-of-way. If the petition is granted, the center line of the traveled way will be the center line of the 60 foot easement.

Commissioner Curtiss stated there is some landscaping on both sides of the road that would be in the right-of-way, but not encroaching on the road.

Greg Martinsen stated that was correct. It is not unusually for landscaping to be within the right-of-way.

Joe Jedrykowski asked what the opportunities were to the north of Queen Anne Lane for additional development that could potentially put traffic on Queen Anne Lane going south.

Greg Martinsen stated that was a difficult question. There is a lot of private land, but it belongs to Helena Maclay and other Maclay family members. What they might do with the land is not known.

Joe Jedrykowski asked if traffic would come down Queen Anne Lane if that land were developed, or would it go to the east toward Highway 93.

Greg Martinsen stated it would probably go to the east.

Joe Jedrykowski asked if that would be the same situation on the south end of Queen Anne Lane.

Greg Martinsen stated the actual right-of-way for Queen Anne Lane goes another three-quarters of a mile south.

Joe Jedrykowski asked if traffic would travel north on Queen Anne Lane toward Rowan Road.

Greg Martinsen stated he doubted that would happen.

Commissioner Curtiss asked if Ray Lane goes all the way to Old Highway 93.

Greg Martinsen stated it does. There would always be Sunday drivers, but it would not be used for local traffic.

Chuck Wright stated that he wanted to make it clear that there is already a County road on that 60 foot right-of-way. The road is 20 feet wide and was dedicated in 1909. When the Certificates of Survey were done, it was realized that to make a proper dedication, additional right-of-way was needed. There is 60 feet of right-of-way there, 20 feet being public, 10 feet to the west of the public right-of-way is private and 30 feet on the east of the public right-of-way is private. If someone with money wanted to, they could put in a road, because it is already an easement for road right-of-way.

Greg Martinsen stated that is what leads back to the equity issue. Everybody uses the road, so they should share equally in providing for it to be there.

Joe Jedrykowski stated there have also been comments that lead him to believe that folks may believe that if the County acquires the 60 foot right-of-way, that a high speed road will be built through there. The County isn't a road building agency, there is no money in the budget to build that road. Nothing will change concerning the existing level of the road. The only way it would change would be through an RSID to bring it up to County standards, a 24 foot wide paved road with 2 foot shoulders, ditches, drainage, etc. That would be an expensive proposition and not many homeowners would vote for an RSID.

Mike Sehestedt asked if Joe has looked at this as it exists on the ground.

Joe Jedrykowski stated he has not been up there for a long time, but Chuck has been there recently.

Mike Sehestedt asked if a road could be constructed to County standards within this 60 foot right-of-way.

Joe Jedrykowski stated that depending on side slope, sometimes 60 feet is not enough.

Chuck Wright stated it would most likely be possible to construct a road to County standards. There are some trees and landscaping in the right-of-way, but that is common.

Chairman Evans stated that by law, a site inspection must be done before a decision can be made. She and Chuck Wright will be doing the site inspection at 1:30 next Monday. Residents are welcome to be present if they wish.

Dan Cruson stated that he was not sure if the road existed between the property lines. He asked that they take a close look at that during their site inspection. He felt Mr. Martinsen was incorrect about the location of the road.

Chairman Evans recessed the public hearing. The Board will reconvene, receive a report from the site inspection and make a decision on this issue next Wednesday, June 30, 2004 at the 1:30 p.m. Public Meeting.

Commissioner Curtiss stated for the record that Mike Dwyer, who lives on Dundee Road, called to say he was in favor of the petition to make Queen Anne Lane a public road.

**Consideration: Frenchtown Medical Addition (2 commercial lots on 2.8 acres) – 0.5 miles east of Frenchtown**

Tim Worley, Office of Planning and Grants, presented the staff report.

This is a request from Scott Green, represented by Brenda Rankin of Territorial Engineering and Surveying, to create Frenchtown Medical Addition, a two-lot commercial subdivision of a 2.8 acre parcel. The property is located about a half mile east of Frenchtown on Beckwith Street (Highway 10). The site is currently occupied by a dental office.

The property is unzoned and is within the Frenchtown Activity Circle where commercial uses are encouraged. Beckwith Street (also known as Highway 10), is a 30 foot wide paved road within an 80 foot public right-of-way which meets the Subdivision Regulations.

A shared driveway is proposed so there will be no new accesses onto Beckwith Street. As a result of this shared access, the plat has a 40 foot by 50 foot shared private access easement for both lots. The submittal also contains a shared driveway maintenance agreement. As the length of the second driveway is not know, staff is recommending that language referring to driveways in excess of 150 feet be included in the covenants that specifically reference turnarounds for fire apparatus. No walkways are being proposed with the subdivision. The proposal does meet the requirement for walkways because there is an RSID waiver on the plat that references improvements to Beckwith Street, including walkways.

Individual wells are planned for the two lots and there are two drainfields currently on-site. The dental office uses one of the drainfields and there has been a drainfield easement provided for the dental office itself.

The nearest Frenchtown Rural Fire station is within a third of a mile from this property. Frenchtown Rural Fire reviewed this proposal and made a recommendation for either a sprinkler system in the new building on Lot 2 or that there be a water supply for fire fighting on-site. Staff is recommending this information be contained within the covenants.

A small portion of the western part of the property is a Zone AE FEMA floodplain associated with the Clark Fork River. Mill Creek also runs through the western portion of the property, but there is no FEMA floodplain associated with it. There are an estimated 1.28 acres of riparian cover on the property which have been designated as a No Improvement Zone by the developer. Because of this, the proposal has a Riparian Resource Management Plan that specifically speaks of uses and non-uses within this area. Staff is recommended that the Supplemental Data Sheet be attached to the Riparian Resource Management Plan. Staff is making a recommendation based on the potential flood risk associated with Mill Creek that new commercial structures be elevated 2 feet above the existing grade. Based on discussions at Planning Status, there are amendments to the wording of Condition 3 to make this a recommendation, not a requirement. Condition 3 would read as follows: "The following provisions shall be added to the plat and to the proposed development covenant: 'In order to mitigate the risk of flooding, Missoula County recommends that all commercial structures be constructed with their finished floor and all mechanical duct work a minimum of 2 feet above existing grade. Additionally, no basements should be constructed below the finished floor elevation.'"

Mack Long of Fish, Wildlife and Parks, recommended certain amendments to the Living with Wildlife section based on the riparian cover that exists on the property. Also, radon mitigation language as recommended by the Health Department should be included in the covenants. In conclusion, staff recommends approval of the Frenchtown Medical Addition Subdivision.

Brenda Rankin, Territorial Engineering, developer's representative, stated that as discussed on Monday, the owner is in agreement with the conditions. The covenants have already been changed to reflect these condition. They are also in agreement with the new language of Condition 3, the owners concern was with handicapped access. There are existing drainfields and replacement areas for both on the property. Both are permitted and permit numbers have been provided.

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Chairman Evans asked for public comments. There were none.

Commissioner Curtiss moved that the Board of County Commissioners amend Condition 3 to reflect the changes as submitted by a memo from Tim Worley dated June 23, 2004 in regard to the flood risk from Mill Creek. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the Frenchtown Medical Addition, based on the findings of fact in the staff report and subject to the conditions of approval as amended. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

**Frenchtown Medical Addition Conditions of Approval:**

1. The development covenant shall be amended to include the following sections:
  - a. Dead-end driveways in excess of 150 feet in length shall have approved turnarounds for fire apparatus. A turnaround shall be located within 150 feet of the building. A minimum unobstructed width of not less than 20 feet and an unobstructed vertical clearance of 13 feet, 6 inches shall be provided for any driveway over 150 feet. The opening through a gate should be two feet wider than the road. Final design shall be approved through the Frenchtown Rural Fire District.
  - b. Prior to occupying the commercial structure(s) constructed on Lot 2 in Frenchtown Medical Addition, the developer or purchaser of the lot shall: 1) install an NFPA 13 standard commercial fire sprinkling system; or 2) provide a 350 gpm water source for fire protection to be reviewed and approved by the Frenchtown Rural Fire District.
  - c. The property owners of Frenchtown Medical Addition are advised that Missoula County has high radon potential and all new construction should incorporate passive radon mitigation systems.
  - d. Do not feed wildlife or offer supplements (such as salt blocks), attractants or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against State law (MCA 87-3-130) to provide supplemental feed attractants if it results in a "concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety."
  - e. Garbage should be stored in secure animal-resistant containers or indoors to avoid attracting animals such as bears, raccoons, dogs, etc. It is best not to set garbage cans out until the morning of garbage pickup.
  - f. Any pets should be confined to the buildings, in a fenced yard or in an outdoor kennel area and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current State law, it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124). Pet food should be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears, skunks, raccoons, etc. When feeding pets do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your building(s).
  - g. Consider boundary fencing that is no higher than 3.5 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in a fence or injuring themselves when trying to jump a fence. [To follow Section 4B in the development covenant]. *Subdivision Regulations Article 3-2(10)(E), 3-7(1), Frenchtown Rural Fire District, City-County Health Department and Montana Department of Fish, Wildlife and Parks recommendation.*
2. The developer shall include a reduced-sized version of the supplemental data sheet to be referenced as an attachment to the Riparian Resource Management Plan. *Subdivision Regulations Article 5-3(5)(F).*
3. The following provisions shall be added to the plat and to the proposed development covenant: "In order to mitigate the risk of flooding, Missoula County recommends that all commercial structures be constructed with their finished floor and all mechanical duct work a minimum of 2 feet above existing grade. Additionally, no basements should be constructed below the finished floor elevations." *Subdivision Regulations Articles 3-1(1)(B), 4-1(12), Floodplain Administrator and OPG recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 2:47 p.m.

Resolution No. 2004-089 – Following the Public Meeting, the Commissioners signed Resolution No. 2004-089, approving and authorizing the issuance of Revenue Note (Rocky Mountain Elk Foundation Headquarters Project) Series 2004A, in an original aggregate principal of \$5,000,000, pursuant to Montana Code Annotated, Title 90, Chapter 5, Part 1; approving the form and authorizing the execution of the Revenue Note and related documents; and providing for the security, rights and remedies with respect to the Note.

THURSDAY, JUNE 24, 2004

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.



Claims Lists – Commissioners Evans and Curtiss signed two (2) Claims Lists, dated June 23, 2004, with the following grand totals:

- 1) \$7,901.66; and
- 2) \$39,144.17.

The Claims Lists were returned to the Accounting Department.

Plat – The Commissioners signed the Plat for Stonehaven Estates, a four lot summary plat of Lot 5, Patton Estates, located in the NE¼ of Section 24, T 12 N, R 20 W, PMM, Missoula County, a total area of 8.00 acres, with the owners/developers of record being Willard E. Kopetski and Vondene Hopkins Kopetski, Trustees of the Kopetski Family Trust under Declaration of Trust dated December 1, 2000.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Taunia Riska, Lolo, as Principal for Payroll Warrant #18947 (payable to Lolo Education Association), issued June 10, 2004 on the Missoula County Payroll Fund in the amount of \$4,095.28 (for Association dues), which cannot be found.

#### ADMINISTRATIVE MEETING

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

Bond Documents – The Commissioners signed Bond documents pertaining to the issuance of a Series 2004A revenue note in an aggregate principal amount not to exceed \$5,000,000 under Montana Code Annotated, Title 90, Chapter 5, Part 1, in order to finance a headquarters facility for the Rocky Mountain Elk Foundation, Inc. A hearing on these Bonds was held on June 23, 2004; Resolution No. 2004-089, approving and authorizing the issuance of said Note was also signed on June 23, 2003.

Resolution No. 2004-090 – The Commissioners signed Resolution No. 2004-090, dated June 24, 2004 a resolution to annex to the Frenchtown Rural Fire District a parcel of land described as: “Rosco Road Properties” located in Sections 5 and 6, T 14 N, R 22 W, and Section 32, T 15 N, R 22 W, Missoula County. A Public Hearing on this matter was held on May 26, 2004; no one appeared to protest the annexation.

Other items included:

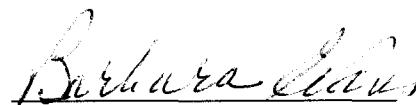
- 1) After discussion, the Commissioners agreed to have the County Parks Staff proceed on working with the American Legion and Chris Falconer of Darkside Paintball on contract terms for a sublease of the American Legion Ballfield at Big Sky Park, subject to a percentage of the revenue generated to be split with the County. The Commissioners also want the approval of the Board of Adjustment and the Health Department.

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

#### **FRIDAY, JUNE 25, 2004**

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

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

#### **MONDAY, JUNE 28, 2004**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Carey was out of the office all day. At noon, Commissioner Curtiss attended a luncheon for the Domestic Violence Program held at the Moon Randolph Homestead.

#### Site Inspection

In the afternoon, Commissioner Evans accompanied Chuck Wright and Joe Jedrykowski of the Public Works Department on a site inspection of Queen Anne Lane for the request to establish a portion of the road as a County Road.

Claims List – Commissioners Evans and Curtiss signed the Claims List, dated June 22, 2004, with a grand total of \$25,645.66. The Claims List was returned to the Accounting Department.

Claims Lists – Commissioners Evans and Curtiss signed five (5) Claims Lists, dated June 24, 2004, with the following grand totals:

- 1) \$7,470.35;
- 2) \$94,676.98;
- 3) \$46,617.31;
- 4) \$1,007.09; and
- 5) \$14,603.81.

The Claims Lists were returned to the Accounting Department.

Claims Lists – Commissioners Evans and Curtiss signed three (3) Claims Lists, dated June 25, 2004, with the following grand totals:

- 1) \$3,081.39;
- 2) \$6,038.26; and
- 3) \$36,091.74.

The Claims Lists were returned to the Accounting Department.

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Liberty Electric, Chester, MT as applicant for Hellgate Elementary Warrant #7692, issued May 7, 2004 on the Missoula County General Fund in the amount of \$1,003.25 (for services), which was not received in the mail. No bond of indemnity is required.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 13 – CY2004 - Pay Date: June 25, 2004. Total Missoula County Payroll: \$982,167.54. The Transmittal Sheet was returned to the Auditor's Office.

Letter – Chairman Evans signed a letter, dated June 25, 2004 to Susan Harris, HOME Program Specialist, Montana Department of Commerce, Helena, MT requesting an extension of the Missoula County Home Buyer Assistance Program, HOME Contract #M02-SG300105 from the project end date of June 30, 2004 to December 31, 2004. Administered by District XI Human Resource Council, the program has approved 22 households for assistance, a commitment of \$454,500. Attached to the letter was a new Project Implementation Schedule; the County still has \$60,532 in project funds to draw down. The letter was returned to Jenifer Blumberg at the Office of Planning and Grants.

Request for Action – Chairman Evans signed two (2) cover pages of Annual Progress Reports to HUD for funding received for the following: 1) the Salvation Army's Gateway Center for the homeless (in the amount of \$184,737 for the three-year project); and 2) the YWCA's Ada Feldman Transitional Housing Project (in the amount of \$131,522 for the two-year project). Both documents were returned to Kristina Swanson in the Office of Planning and Grants.

Signature Page – The Commissioners reviewed and signed one (1) Larchmont Claims Signature Page for the A/P Invoice Register dated June 14, 2004, in the amount of \$170,453.96. The Signature Page was returned to the County Auditor.

#### TUESDAY, JUNE 29, 2004

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

Plat and Agreements – The Commissioners signed the Plat, Subdivision Improvements Agreement and Guarantee, and Development Agreement for Canyon Creek Village, Phases 9 and 10, a subdivision located in the NE¼ of Section 1, T 13 N, R 20 W, PMM, Missoula County, a total area of 6.07 acres, with the owners of record being Wesmont Builders/Developers, Inc. The Improvements Agreement relates to several items as described in the Engineer's Opinion of Cost, which is attached as Exhibit "A." Said improvements shall be completed no later than June 10, 2005. The estimated costs are \$563,203.50, and have been guaranteed by a Letter of Credit from First Security Bank. The Development Agreement, dated May 19, 2004 relates to maintenance of parks, boulevards, common areas and fire hydrants.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Custodial Western Cascade, Spokane, WA as Principal for Missoula County Public Schools Warrant #101302, issued January 21, 2004 on the Missoula County General Fund in the amount of \$150.27 (for custodial supplies), which cannot be found.

#### ADMINISTRATIVE MEETING

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

Memorandum of Understanding – Chairman Evans signed a Memorandum of Understanding ("MOU"), entered into on March 1, 2004 between the Partnership Health Center ("PHC") and Missoula County, formalizing repayment of funds in the amount of \$544,342 owed by PHC for the deficit incurred during fiscal years 2002 and 2003. All terms and conditions are set forth therein. The MOU was returned to Terry Delgadillo at PHC for further signatures and handling.

Encroachment Permit – The Commissioners signed a Missoula County Encroachment Permit, dated June 20, 2004 for C. Leroy and Joanna R. Anderson of 7300 Cochise Drive, to encroach upon a portion of County rights-of-way named Deadman Gulch Road and Cochise Drive. The property's location is described therein. The encroachment shall be limited to an underground domestic water line.

Easement – The Commissioners signed a Public Road Easement, dated June 8, 2004 between Maloney Properties, LLC, owner of Tract 1 of COS #4555, Missoula County, and Missoula County for an 80 foot right-of-way easement in conjunction with future development of the Maloney Ranch properties. The existing Lower Miller Creek Road was previously altered according to Resolution No. 2004-002, providing an altered 60 foot width; this easement grants an 80 foot width along this altered centerline. All other terms and conditions are set forth therein.

Contract – Chairman Evans signed a Mineral/Missoula County Services Contract with the Superintendent of Schools of Missoula County for the performance of some duties required of County Superintendents for Mineral County for the period from July 1, 2004 to June 30, 2005. The total amount shall not exceed \$3,300. All other terms and conditions are set forth therein. The document was returned to the Superintendent of Schools for further handling.

Agreements – Chairman Evans signed two (2) Agreements (DEQ Agreements Nos. 505005 and 505006) between Missoula County and the Montana Department of Environmental Quality (“DEQ”) for the following:

- 1) Agreement to assist Missoula County to conduct its own air pollution control program; DEQ will pay up to a maximum of \$96,517; and
- 2) Agreement for services related to the administration and implementation of Title V permits (Federal Clean Air Act); DEQ will pay up to a maximum of \$2,000.

The term for both contracts is July 1, 2004 through June 30, 2005. All other terms and conditions are set forth therein. The documents were returned to the Health Department for further signatures and handling.

Resolution No. 2004-091 – The Commissioners signed Resolution No. 2004-091, dated June 29, 2004, a Budget Amendment for the DES (Disaster and Emergency Services) Department reflecting \$100,484 in funding received from the Department of Justice WMD Grant. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Extension Request – The Commissioners approved and signed a letter, dated June 29, 2004 to Becky Weaver, Professional Consultants, Inc., approving her request for a one-year extension of the final plat approval deadline for the Drake Estates Subdivision. The new deadline will be July 23, 2005.

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

**WEDNESDAY, JUNE 30, 2004**

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, 2004, with a grand total of \$37,731.22. The Claims List was returned to the Accounting Department.

Claims Lists – The Commissioners signed four (4) Claims Lists, dated June 29, 2004, with the following grand totals:

- 1) \$109,141.11;
- 2) \$165,319.65;
- 3) \$711.78; and
- 4) \$79,165.05.

The Claims Lists were returned to the Accounting Department.

Claims Lists – The Commissioners signed three (3) Claims Lists, dated June 30, 2004, with the following grand totals:

- 1) \$49,566.45;
- 2) \$820.58; and
- 3) \$16,271.22.

The Claims Lists were returned to the Accounting Department.

**CHIEF ADMINISTRATIVE OFFICER MEETING**

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

Agreement – The Commissioners signed a Satisfaction of Sanitary Sewer Grant Program Agreement for Property Owners, dated June 30, 2004, with Robert M. and Sharolet A. McDonald, 604 Sommers Street, declaring fees fully paid, satisfied and discharged. The original agreement dated August 14, 2003, and recorded in Book 714, at Page 1,058, is part of a program funded by HUD/State Community Development Block Grant and/or Missoula Valley Water Quality District funds to assist qualified low- and moderate-income residents of the East Missoula County Sewer District.

Contract – The Commissioners signed an annual Professional Services Contract between Missoula County and Beth Thompson, M.D., to serve as Health Services Division Medical Advisor. The total amount shall not exceed \$6,000. The term will be July 1, 2004 through June 30, 2005. All other terms and conditions are set forth therein.

Resolution No. 2004-092 – The Commissioners signed Resolution No. 2004-092, dated June 30, 2004, a Budget Amendment for the Auditor, reflecting a total of \$13,366.78 in costs as set forth for Veterans Burial Costs and FEMA Grants. For purposes of total disclosure these expenditures should be included in the formal Fiscal Year 2004 Operating Budget and Revenue Estimates for Missoula County.

Contract – The Commissioners signed four (4) Professional Services Contracts between Missoula County and John Vugteveen of Sat Comm Support, for a variety of tasks related to microwave and 2-way radio projects, as follows:

- 1) Contract for project management services during the upgrade to the County’s microwave system, at the rate of \$65.00 per hour plus mileage;
- 2) Contract for oversight and technical work to move radio equipment from the 911 equipment room to the penthouse on the Courthouse, at the rate of \$65.00 per hour plus mileage and materials, and small sub-contractors, as necessary (total shall not exceed \$50,000);
- 3) Contract for oversight and technical work to rebuild the communications facility at Pt 118, at the rate of \$65.00 per hour plus mileage and materials, and small sub-contractors, as necessary (total shall not exceed \$50,000); and

- 4) Contract for general contracting services for building the communications facility at the Pierce Lake site, at the rate of \$65.00 per hour plus mileage and materials, and small sub-contractors, as necessary (total shall not exceed \$50,000).

The term for all contracts is June 21, 2004 through December 31, 2004. All other terms and conditions are set forth therein. The documents were returned to Jane Ellis in Emergency Services for further signatures and handling.

Subordination Agreement – Chairman Evans signed a Subordination Agreement, dated June 30, 2004 between Missoula County and U.S. Bank National Association ND, Missoula, pursuant to a Promissory Note between the parties, the principal sum of \$5,000 secured by a Deed of Trust dated October 4, 2001, and Darliss S. Balentine, 2036 Kensington Avenue, Missoula, MT (as Borrower and First-Time Homebuyer who is refinancing) covering the premises described as Lots 19, 20 and 21 in Block H of Carline Addition No. 2, a platted subdivision. The document was returned to Jenifer Blumberg in the Office of Planning and Grants for further handling.

**PUBLIC MEETING – June 30, 2004**

The Public Meeting was called to order at 1:30 p.m. by Commissioner Barbara Evans. Also present were Commissioner Bill Carey, Commissioner Jean Curtiss, Chief Civil Deputy County Attorney Mike Sehestedt, County Engineer Joe Jedrykowski and County Public Works Assistant Director Chuck Wright.

**Pledge of Allegiance**

**Public Comment**

None

**Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$674,347.23. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Decision: Petition to Establish Queen Anne Lane as a County Road**

This is a petition to establish a portion of that certain County road, specifically described as Queen Anne Lane, located in the southeast one-quarter of Section 10, the southwest one-quarter of Section 11, the northwest one-quarter of Section 14 and the northeast one-quarter of Section 15, Township 11 North, Range 20 West, principal Meridian, Montana, Missoula County, Montana. From the projected north boundary line of Lot 8 of Mackintosh Manor, southerly and 30.00 feet both sides of the Section line common to Sections 10 and 11 and the Section line common to Sections 14 and 15 approximately 2,960.05 feet to the projected East-West mid-section line of Section 15. (See attached “QUEEN ANNE LANE EXHIBIT.”)

The reasons for the request are as follows:

1. As a public roadway, Queen Anne Lane would provide “legal and physical access” to all of the lands and owners thereof affected by this establishment.
2. As a public roadway, Queen Ann Lane would be eligible to utilize public funding and bonding for improvements and/or maintenance. This could be done through the creation of a Rural Special Improvement District (RSID) to provide funding to construct the road to County standards so Missoula County would accept the road for regular County Road maintenance. All of the landowners who use this road would share in the costs and benefits of the RSID. The eventual expense, in the future, of this method is far less than what could be expected by any other option and Queen Anne Lane becomes a County road.

The following landowners have been notified:

Robert E. Vacek and Patsy Merritt-Vacek	Maclay Ranch Partnership	John M. Dwyer and Colleen R. Dwyer
Jerold A. Johnson and Judy C. Johnson	Stephen A. Stoll and Jane Kelly Stoll	Brian B. Potter and Janice E. Potter
David A. Dufresne and Shelia V. Dufresne	John Mandell and Cindy Mandell	Martin G. Moss
Scott Louis Kappes and Deana L. Kappes	Joseph W. Cotchett and Victoria E. Cotchett	Dominic L. Mahan and Michelle Mahan
Lyle Wilkinson	Gregory L. Brown and Brenda D. Brown	Daniel Wayne Cruson and Dawn Cruson
Timothy D. Petersen and Barbara M. Petersen	Alex V. Hamilton and Debra L. Hamilton	William L. Rogers and Merritt K. Rogers
Mary Kathleen Moe	Gary D. Richtmyer and Susan M. Richtmyer	Randall A. Pryhoricki and Kim Pryhoricki
Robert N. Sanchelli and Janiel A. Sanchelli		

Joe Jedrykowski stated that he, Chuck Wright and Commissioners Evans conducted a site visit of the road and discussed several issues. He had a statement, from an engineering standpoint, that he would like to read into the record.

Regarding Queen Anne Lane, the County Department of Public Works is in favor of accepting the entire 60 foot road right-of-way for Queen Anne Lane from the projected north boundary line of Lot 8 of Mackintosh Manor, southerly and 30.0 feet on both sides of the Section line common to Sections 10 and 11 and the Section line common to Sections 14 and 15, approximately 2,960 feet to the projected east-west mid-section line of Section 15, for the following reasons:

1. A 60 foot wide right-of-way already exists. Only a portion (20 feet) is a County public right-of-way. It is to the advantage of the County to be in control of the entire right-of-way. By accepting the entire 60 foot right-of-way, all rights associated with future road improvement, road maintenance and utility placement are under control of one governmental entity instead of several entities.
2. The existing road is about 20 feet wide and seems to be more or less constructed within the 20 foot County right-of-way. The existing 40 feet of private right-of-ways are occupied by utilities and a small amount of trespass consisting of a fence, trees and landscaping. If the County accepts the full 60 feet of right-of-way, no maintenance or snow plowing would occur. First, the road would have to be improved to a higher standard. The County does not have the financial resources needed to reconstruct and pave this road. A rough estimated cost of employing an engineering firm for survey, design and construction inspection, and constructing the road, is \$185,000.
3. Currently, this road is a relatively small collector road that only serves the residents who live along it. There appears to be no reason to extend it to the south and this should be avoided in order to isolate it from high-use roads in that direction. It also appears that any future subdivision to the north would logically route traffic to the east toward Highway 93. For those reasons, there is a serious question why this road would have to be 24 feet in width. For the record, if this road is ever improved, the County Commissioners should consider a variance from the standards that have been established and approve a 22 foot paved surface road.
4. Should the citizens who live adjacent to this road decide at some future date to improve this road through the RSID process to a paved, 22 foot standard, this work could be performed with minimal impact to the utilities, trees and landscaping that currently exist along the road. Existing trees are relatively young and small. Removal at some future date would only be necessary if they grow enough to become a hazard to road users, interfere with road maintenance or damage the improved road prism due to root growth.

The above statements reflect the position discussed during the site visit.

Chuck Wright stated that he agreed with Joe one-hundred percent. He provided a diagram of the existing right-of-ways and what would be affected by accepting this as a County right-of-way. The centerline of the 20 foot existing road straddles the east boundary of the public right-of-way. If the road is installed as Joe suggested, to a width of 22 feet, none of the landscaping or utilities will be affected. The petition asks that the 60 foot right-of-way be encumbered by one entity.

Chairman Evans stated that she concurs with both Joe and Chuck. There are some landscaped areas that she doesn't want to see destroyed. If the right-of-way is extended on the west side, it would be right at those folks front door. It is not likely a 24 foot road would be necessary, a 20 to 22 foot road would be sufficient.

Commissioner Carey moved that the Board of County Commissioners accept the petition to establish the portion of Queen Anne Lane described in the request as a County right-of-way. Commissioner Curtiss seconded the motion.

Commissioner Curtiss stated that the confusion that some folks might have is that they don't understand easements. She agreed that it is in the interest of a majority of the public to have all these easements encumbered on one entity.

Chairman Evans asked for public comments.

Dan Cruson, 16170 Queen Anne Lane, stated there was testimony that is not correct. He understood that it was said that the road currently exists on the property lines. That is not true.

Chuck Wright stated they measured from the existing stakes to show where the easements exist.

Greg Martinsen stated he surveyed the entire road in this area. The Section line is the east boundary of the subdivision. The 20 foot public easement lies within the boundary of the subdivision. The road does straddles the Section line for its entire length. When the tracts were created to the east, it was recognized that at some point in time there should be a 60 foot wide right-of-way. That is why the additional 30 foot and 10 foot private easements were created in 1977. The original 20 foot public easement was created in 1909 when the plat was filed.

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

Mike Sehestedt stated that it might be helpful to add, for the record, comments that if the road is improved, the Commissioners would consider a variance to a 22 foot width as described and that development to the north or south should not be using this road for substantial access.

Chairman Evans stated she agreed with those recommendations.

Monte Sipe, Office of Planning and Grants, stated that currently, OPG is in the process of reviewing approximately 10 new subdivisions north of Queen Anne Lane.

Mike Sehestedt stated that he was referring to development north and south of this subdivision, so that if property develops to the north, it will access the highway on its own, not via Queen Anne Lane. When property develops to the south, it can use the road network there, without using Queen Anne Lane. The representations by Joe and Chuck during their site inspection and the testimony from the public justify putting the sense of the Commission on the acceptance of public right-of-way.

Chuck Wright stated that if Joe's written statement was added to the resolution granting the petition, it would cover everything discussed.

Commissioner Carey stated that he would amend his motion to include Joe's written statement in the resolution granting the petition.

Commissioner Curtiss stated that she seconded the amendment to the motion.

The motion carried on a vote of 3-0.

Commissioner Curtiss stated for the record that the County was not accepting the road for maintenance at this time. The granting of the petition is to make the 60 feet of right-of-way under the control of one entity, that being Missoula County.

**Decision: Willowbrook Meadows Riparian Plan and Phasing Plan**

Monte Sipe, Office of Planning and Grants, presented the staff report.

The applicants, Duane D. and Shirley K. Pettersen, represented by Nick Kaufman of WGM Group, Inc., are requesting approval of the Willowbrook Meadows Subdivision Riparian Plan, Indemnification Language for flooding and a Phasing Plan for this proposal.

The Missoula Consolidated Planning Board conducted a public hearing on this request on Tuesday, December 16, 2003 and voted 4 to 1 with 3 abstaining to recommend denial of the subdivision. The Board of County Commissioners conducted a public hearing on this request on Wednesday, January 7, 2004 and voted 3-0 to approve the subdivision with amended conditions. The following approved amended conditions are pertinent to areas of riparian resource, lot design and lot location:

- *The remainder shall be included within the subdivision as a lot. The applicant has included the remainder as a lot, which is all of the area to the north of the homesites, designated as Lot 34.*
- *All areas of riparian resource, including those within the area proposed for additional flood storage on the remainder and Lots 19, 20, 25 and 33, shall be mapped and identified prior to placement of fill material or any grading to ensure their preservation. The area of riparian resource map depicting lot and road layout shall be subject to review and approval by the Board of County Commissioners prior to final plat approval and shall be attached to the Riparian Management Plan.*

These conditions were adopted due to the lack of information regarding the location of areas of riparian resource pertinent to the project. The applicant has completed a more detailed survey of areas of riparian resource and provided a new riparian resource map for OPG staff and the Board of County Commissioners consideration. Based on the impacts proposed for development of lots, two additional variances have been requested by the applicant. They include a variance to Article 3-13(4)(B) (requiring subdivisions which encompass areas of riparian resource to place development outside the areas of riparian resource) and a variance to Article 3-3(1)(D)(iii) (requiring each lot to abut on and have access to a public or private street or road for access to Lot 33). Additionally, staff has requested a variance to Article 3-3(1)(D)(iii) for access to Lot 25.

The applicant has provided an Indemnification and Hold Harmless Agreement to the Board of County Commissioners concerning the engineering for areas requiring fill and assurances that mitigation measures will prevent flooding.

Originally, the applicant submitted a request to the Board of County Commissioners to develop the subdivision in three phases. In Phase I, all roadways and infrastructure will be built and Lots 1-6 and Lot 34 will be platted. Phase I is proposed for final plat filing on or before January 7, 2005. Phase II will plat Lots 7-14 and 30-33 on or before January 7, 2006. Phase III is scheduled for final plat filing on or before January 7, 2007 of Lots 15-29.

Initially, Lot 34 was proposed as a portion of Phase I. Now the applicant has requested that be amended and that Phase I entail Lots 1-6, a portion of parkland and all the infrastructure improvements, all the roadways, water and sewer facilities, etc. Phase II would entail platting of Lots 7-14 and Lots 30-33. Phase III would be the remaining portions of the project, which would entail Lots 15-29, Lot 34 and the remainder of the common area/parkland/riparian areas to the south and west of the project. Phase I is proposed to be platted on or before January 7, 2005. Phase II, the following year, January 7, 2006. Phase III is proposed to be platted on or before January 7, 2007.

At the end of the January 7, 2004 meeting, there was some concern expressed by the Commissioners in regards to the issues pertaining to floodplain development as a portion of this project. There are two designations, the areas determined to be in the 100 year floodplain/flood fringe based on elevation data and the areas with a FEMA designation which were required to obtain a conditional Letter of Map Revision. That has been submitted and approved as a portion of the grading plan. This entails bringing in fill material to raise those pieces of property to the base flood elevation.

Nick Kaufman, WGM Group, Inc., developer's representative, stated the FEMA study has detailed elevation data for the Bitterroot River, but the elevations were based on photogrametric methods at that time. Since that time, two foot contour elevations have been mapped for this property. The adopted boundary of the 100 year floodplain on the FEMA maps is not congruent with the topographic information on the site. It has been requested to FEMA to amend the 100 year floodplain to what the elevations are and then get floodplain permits to fill certain portions of the site.

Monte Sipe stated that the applicant has submitted an Indemnification and Hold Harmless Agreement in relation to the engineering for the proposed fill in the floodplain areas. The third item of concern from the January 7, 2004 meeting was a condition that stated "all areas of riparian resource, including those within the area proposed for additional flood storage on the remainder and Lots 19, 20, 25 and 33, shall be mapped and identified prior to placement of fill material. The Area of Riparian Resource Map depicting the lot and road layout shall be subject to review and approval by the Board of County Commissioners prior to final plat approval and shall be attached to the Riparian Management Plan."

Since the January approval, OPG has been working with the developer's representatives to put together a new Riparian Plan which specifies in more detail the locations of those riparian areas in regards to the lot, the proposed impacts and mitigation. Based on that information, it was determined that some additional variances were necessary. The original findings had identified concerns with Lots 19 and 20. There was testimony at the January meeting that this particular riparian feature was a man-made feature for use with Pete's Pitch and Putt. Since then, the golf course has been abandoned. Staff had originally recommended deletion of Lots 19 and 20, but based on subsequent analysis, staff has withdrawn that recommendation.

The other areas of concern that were identified were Lot 25 and Lot 33. Staff had originally recommended deletion on those two lots based on impacts to riparian resources. Lot 33 also had some issue with an easement through an area designated as floodplain and common area. It would require removal of vegetation to gain access to Lot 33. There is a variance being requested for that access, because the Subdivision Regulations require all lots to abut and have access off a public or private road. There is an easement that comes down through two lots on the adjoining subdivision and on Lot 33, to provide some utilities to the site. This site will need water and sewer as all the lots will be connected to the Lolo RSID 901 Water and Sewer District.

The applicant submitted a variance request to the riparian standards for Lot 25 and staff is recommending conditional approval. That is in regard to supporting the proposed mitigation pertaining to Lots 19 and 20, the cul-de-sac, Lot 27 and Lots 21-23. There are some impacts to riparian resources for Golf Drive to cross the riparian area on the eastern property line and utility services to some of the lots. Staff is in support of the majority of those impacts with the exception of some impacts on Lot 25 and the impacts for the access to Lot 33. Staff is recommending conditional approval of the variance request for Lot 25 to not abut and have access to a public or private road. The houses on Perry Place, Lots 24 and 26, front on it and then access is provided back to Lot 25. It is being suggested that Perry Place, the short court, be eliminated and that Lots 24 and 26 adjust lot lines accordingly to provide a 20 foot access for a 12 foot driveway to Lot 25. This allows Lots 24 and 26 to front directly off Golf Drive and provide access to Lot 25, thereby removing most of the impacts to the riparian area.

There is the same variance request for Lot 33, that all lots abut and have access to a public or private road. Lot 33 is isolated from the rest of the lots in the proposal. Access is proposed via a 20 foot easement across an area that is in the floodplain, is an area of riparian resource and part of the common area. It would also require pulling water and sewer to the area. Staff is recommending denial of the variance request and that Lot 33 be deleted from the project.

Staff is recommending that the Willowbrook Meadows Riparian Resource Management Plan, Phasing Plan and Hold Harmless Agreement be approved, based on the seven recommended conditions provided:

1. Perry Place shall be eliminated and Lot 25 shall be accessed via a 20 foot wide private access easement located along the northwestern property line of Lot 24, subject to review and approval by OPG prior to final plat approval of Phase I. *Subdivision Regulations Article 3-1(5), 3-1(9), 3-13 and OPG recommendation. (Pertains to the conditional approval of the variance for Lot 25).*
2. Lots 24 and 26 shall be required to construct homes with the front orientation and access onto Golf Drive, subject to review and approval by OPG, prior to final plat approval of Phase II. *Subdivision Regulations Article 3-1(5), 3-1(9), 3-13 and OPG recommendation. (Pertains to the conditional approval of the variance for Lot 25).*
3. All portions of the Riparian Resource Management Plan (3 documents) shall be modified to delete reference to proposed Lot 33, access across the Common Area and proposed impacts to proposed Lots 24, 25 and 26, west of the centerline of Perry Place as shown on the Rough Grading Plan dated April 20, 2004. This condition is subject to review and approval by OPG prior to final plat approval of each Phase. *Subdivision Regulations Article 3-1(5), 3-1(9), 3-3(D)(iii), 3-13 and OPG recommendation.*
4. Lots 1, 4-9 and 26-32 shall provide 15 foot riparian buffer setbacks for all structures, except decks which shall have 10 foot riparian buffer setbacks from the rear property lines (fences will be permitted within the riparian buffer setbacks). These setbacks shall be shown on the final plat pertinent to each Phase and indicate the restrictions in a note on the plat with reference to the Riparian Resource Management Plan. Additionally, all other "Riparian Areas of No Disturbance" shown on the Rough Grading Plan dated April 20, 2004 shall be shown on the final plat pertinent to each Phase and noted on the plat with reference to the Riparian Resource Management Plan. This condition is subject to review and approval by OPG prior to final plat approval of each Phase. *Subdivision Regulations Article 3-1(5), 3-1(9), 3-3(D)(iii), 3-13 and OPG recommendation.*
5. The final plat for each phase, the grading plan and the Riparian Management Plan-South Map that reflects governing body approval shall be attached as an exhibit to all portions of the Riparian Resource Management Plan (3 documents). *Subdivision Regulations Article 3-1(5), 3-1(9), 3-3(D)(iii), 3-13 and OPG recommendation. (Includes the modification to include Lot 34 with Phase III).*
6. The Riparian Plan Covenants Attachment, Activities Allowed in Areas of Riparian Resource stating, "limited small vehicle/equipment access for tree and bush trimming and maintenance" shall be modified to state, "limited small vehicle/equipment access for required weed management and fence maintenance only." This condition is subject to review and approval by OPG prior to final plat approval of each Phase. *Subdivision Regulations Article 3-1(5), 3-1(9), 3-3(D)(iii), 3-13 and OPG recommendation. (Staff recommends access to the riparian areas be limited to existing foot trails).*



7. Final plat filing for Phase I (Lots 1-6 and the adjoining common area) shall be submitted for final plat approval by January 7, 2005. Phase II (Lots 7-14 and 30-32) shall be submitted for final plat approval by January 7, 2006. Phase III (Lots 15-29, preliminary approved Lot 34) shall be submitted for final plat approval by January 7, 2007. *Subdivision Regulations Article 4-1(17) and OPG recommendation. (Without reference to Lot 33, which staff is recommending be deleted).*

Nick Kaufman stated that key words referred to by Monte include riparian impact. It gives the impression that there can be no impacts on riparian areas, that they need to be left alone. To demonstrate the effects of riparian impacts, he gave a history of this parcel. This wetland has been dredged and piled have been placed over the riparian vegetation. However, that riparian vegetation has come back. This whole area had been used for grazing horses which causes major impacts to the vegetation. This proposal will remove the horses from the property. Another previous use which caused major impacts on the riparian resources was a golf course, which the Board approved as a special exception to the Zoning District. Before and after aerial photos of the Linda Vista Golf Course show significant impacts on the riparian area, much of which was removed. This proposal is not to dredge the wetland, continue to graze horses or do a golf course. It is to minimize riparian impacts and approve the project as proposed. The 1978 Lolo Land Use Plan designated this property as Residential (6 dwelling units per acre). Subsequently, Zoning District 41A was adopted, which encompasses this area, as Residential (4 dwelling units per acre). The 2002 Lolo Regional Plan designates the property as Residential (4 dwelling units per acre). What is the tolerance for riparian impact, no disturbance whatsoever or minimizing the impact. The driveway location to Lot 33 has been moved to minimize its impact on riparian vegetation. Lot 25 has been moved significantly to the west to minimize impacts on the riparian area. Lot 33 is adjacent to three other residential lots and they did a good job of changing the alignment of the driveway to avoid riparian vegetation. All of Lot 34 has significant amounts of riparian vegetation. Out of the 11.5 acres of riparian vegetation on this site, only 0.4 acres will be disturbed by this subdivision; the other 11 acres are preserved. Some of the areas designated as floodplain are hard to visualize because the elevation is so close to the rest of the property that it is hardly distinguishable. The mind imagines a deep swale as being part of the floodplain but they don't exist on this site. Also, all of those areas that are considered in the floodplain will be raised so that the finished floor is two feet higher than the elevation of the 100 year floodplain. Riparian areas can be close to homes and still function properly. As an example, he showed slides of his own home, which includes a pond, and how his home, his cats and his dogs interact with the wildlife and riparian resources, which all thrive quite well. Another example is the wetland at Pattee Creek, near Albertson's and other businesses, which also thrives quite well. Riparian vegetation was removed from the driving range at the Linda Vista golf course, which is severe riparian impact. Horses in a riparian area also cause severe impacts and he showed several slides as examples of the damage caused. This subdivision has a weed management plan for all the lots, including Lot 34. Adjoining land uses are already having some impacts on the riparian area; kids jump the fence and have built a tree house and trails exist. This subdivision has a Riparian Management Plan to educate people so the value of the riparian area can remain. Horses have been fenced out of the area of this subdivision since Spring of this year. Aspen trees are coming back, snowberries and the understory are starting to come back. It is starting to restore itself already just by removing the previous impacts of the golf course and horses. The new alignment for the driveway to Lot 33 is in an area where the delineation of the riparian vegetation is very slight. Since January, the developer has received a 318 authorization from the State of Montana, approval from the Department of Environmental Quality, a 410 permit from the Army Corps of Engineers, a 310 permit from the Missoula Conservation District and have submitted three drafts of the Riparian Resource Management Plan to OPG and the Floodplain Administrator. Driveways have been moved, building sites have been moved, they have worked very hard to mitigate the concerns raised. Willowbrook Meadows consists of 30 acres; 4.87 acres are in park, the total lot and road areas are 8.15 acres. To develop the 8.15 acres, only 0.4 acres of 11.5 acres of riparian area will be disturbed. Walkways adjacent to riparian areas create little or no impact, as shown in several of his slides. When he asked that the Commissioners review the Riparian Plan, it was to bring some perspective to it. He does not feel that absolutely no disturbance of riparian areas is reasonable. This is a plan that allows homes in this setting while mitigating the impacts and overall disturbing very little riparian area and improving the quality of the riparian areas that are not disturbed. When Perry Ashby first contacted WGM Group about this project, much time was spent on-site with Mark Peterson, a registered professional engineer who has been with WGM for two years. Mark used to work for DEQ and is a floodplain and stormwater expert. Mark felt this site could be developed with little or no risk to the public. Mark worked with Brian Maiorano, the previous Floodplain Administrator. Brian would support development in the area if the land outside the floodplain was multiplied by four dwelling units per acre and then clustered in one spot. Brian was not opposed to the filling of specific areas of floodplain to bring the housing to a single location. All floodplain approvals have been received with the exception of Missoula County, who are waiting for the outcome of today's meeting. The proposal for trails falls within the Army Corps of Engineers guidelines as evidenced by their authorization permit dated April 15, 2004. He asked that Variance #3 be approved because Lot 33 is an appropriate building site and the driveway as modified and relocated avoids the significant riparian vegetation. With regard to Condition 1 and removing Perry Place, he has no doubt that can be done but there is a significant question whether that should be done. What needs to be taken into perspective is the way the riparian area has been treated in the past and what the approval of this subdivision does toward the preservation of the riparian area. Moving Lot 25 to the west is a better design and has removed a significant impact on the riparian area. He asked that Condition 1 be deleted and if Condition 1 is deleted, then Lots 24 and 26 can access from the short court, so Condition 2 can be deleted. He asked that Condition 3 be deleted. Conditions 4 and 5 are acceptable. Condition 7 is acceptable if Lot 34 is included in Phase III. With regard to Condition 6 which modifies the language in the Riparian Plan, he asked that the language stay the same as submitted, which is, "limited small vehicle/equipment access for tree and bush trimming and maintenance." He asks for these because he has worked on the design of the subdivision for over two years and knows about riparian vegetation and riparian habitat inside urban areas. He knows a lot about the impact to the riparian area on this site during its previous uses. This is an opportunity to change that and make a positive impact overall on the riparian areas and provide for housing. It took two months for the County Attorney's Office and WGM Group to arrive at acceptable indemnification language. This is a good design and he has no qualms whatsoever about it being approved with the conditions being amended as requested. It improves the riparian habitat overall on the site and provides housing. The Indemnification and Hold Harmless clause reads: "WGM Group, Inc., representing the owner and developer of the subdivision known as Willowbrook Meadows, hereby indemnifies and holds Missoula County harmless for any damages that may result to any parties, including landowners, homeowners, or to public infrastructure, from the negligent act, error or omission, in the engineering work that has been performed and completed by this firm as a result of Missoula County's approval of Willowbrook Meadows." He and other professionals in his firm have no qualms about asking for the changes to the conditions requested. If the changes are not made, housing is being removed from an area that is appropriate for housing in lieu of preserving less than 0.4 acres of riparian habitat, while improving the habitat on the entire site.

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Commissioner Carey stated that there was the possibility of removing one lot, Lot 33.

Nick Kaufman stated that if the Board follows the staff's recommendation, Lot 33 would be removed.

Chairman Evans asked for public comments.

Perry Ashby stated he was the developer of the project. Nick did a great job of addressing all the issues. He had no idea that he or his representative were expected to go through such an arduous and expensive process to develop a plan to protect the riparian areas. He went into the project with certain design features to preserve five of thirteen acres for a conservation-type neighborhood. Lot lines could have stretched through the wetlands. They chose to make 5 acres, or 40%, of the subdivision as a common park area that was protected for the use and enjoyment of the homeowners. His goal was to create an exemplary design for living with nature. This type of design is becoming well accepted throughout the country and he felt this was a good place to start. He has spent \$25,000 in consulting fees strictly on this riparian plan. The goal is to enhance and preserve and enjoy this property. The trail system as approved by the Army Corps of Engineers will be a gravel path, not using heavy equipment, and it may or may not be done. If it is done, little bridges would be used to cross any wetlands. A lot of time, money and energy has been spent on this project. He did not feel it was appropriate to remove Lot 33, it is a great location for a lot and the impact is very minimal. That riparian area is essentially a threshold to entering the project. The riparian area on the left could have been a part of Lot 33, but they chose to leave it as an entrance feature that will benefit everyone. He is not comfortable with relocating or eliminating Perry Place for many reasons. From a design perspective, it is very important to be able to drive to the front of the house via an improved street. It seems contradictory that it is okay to have a lot that doesn't abut a road for Lot 25, but it is not okay for Lot 33.

There were no further public comments.

Commissioner Curtiss stated that staff is recommending deletion of Lot 33. What happens to that area?

Monte Sipe stated there is no recommendation but the assumption is that it will become part of the common area with riparian restoration and flood storage.

Commissioner Curtiss stated that she visited the site. The trees look real nice around the barn. The mowing that has been done looks like it may have removed some riparian vegetation, which was most likely dead anyway. She asked where the storm water storage was on the area.

Nick Kaufman stated that Mr. Peterson's design is that storm water will run off into the wetland areas. It is an industry-wide standard that wetlands treat storm water well. Greg Robertson has said he would like to see a retention basin. There have been initial conversation with Greg and they will meet again to discuss those plans. The science for storm water disposal is very good, but fairly new to Missoula County.

Commissioner Curtiss stated the common area to the left on Golf Drive is not expected to hold much water.

Nick Kaufman stated it would pass the water through to the wetlands.

Commissioner Curtiss stated there appeared to be an area that was higher on the eastern boundary and was that considered for the road.

Nick Kaufman stated that higher is not relative to riparian vegetation. The road alignment that he presented today actually minimizes the impact on riparian vegetation and is the preferred option. The fill material on Lot 33 was dredged. The piles of material that will be removed are the heavy silts.

Commissioner Curtiss stated the areas designated as parks are really the riparian areas. There is no active park for children to play.

Nick Kaufman stated that was correct, but that is because of the riparian regulations. This is becoming an issue with him. He was present when the riparian regulations were adopted and it was never intended that there would be zero impact on riparian areas, they were to be considered as development occurred. The whole area was completely mowed when the golf course was there. That could happen again and function well as a play area but that can't be done because of the riparian regulations. The area will repair itself.

Commissioner Curtiss stated that one of the neighbors spoke with her last night as she was leaving. Has there been any discussion with the neighbors about the two entrance roads and the right-of-way issue.

Nick Kaufman stated Mr. Ashby was not the developer of the original Lolo Greens Subdivision. Pete Petersen and Bob Kelly were the developers; Mr. Ashby built the homes. At the previous public hearing he provided the house plans that were signed by the owners that if built as shown, the driveways and fences would encroach into the public right-of-way and acknowledgement of the owners that was the case. He discussed it with Mr. Robertson and it was also discussed at length at the public hearing.

Commissioner Curtiss stated that Golf Drive would have to be redone to provide access to this subdivision. Have the neighbors been notified that will happen.

Nick Kaufman stated they were notified through the public hearing process and through the neighborhood meeting process, they were all sent letters.

Commissioner Curtiss stated there were some long metal things laying across the creek.

Nick Kaufman stated he had seen them too, they look like painter's planks.

Commissioner Carey stated that most of what the developer wants to do can be done. The main issue is Lots 25 and 33 and some language in the Riparian Plan Covenants.

Nick Kaufman stated that was correct.

Commissioner Carey stated that staff's findings for denying the variance for Lot 33 is persuasive.

Nick Kaufman stated the primary premise on which this property was purchased, based on discussions with Brian Maiorano and Dale McCormick, is tantamount. Brian said to take the area of all those little islands and spots that are outside the 100 year floodplain and multiple it times 4, which would give the number of dwelling units. Then, do not scatter houses all over in the middle of the floodplain. It also makes no sense to have little peninsulas of homes, but rather cluster them in one location. This development is being clustered on those sites most suitable for homes. To refute Finding A denying the variance request, there is some disturbance to the riparian vegetation, but he did not believe it was an absolute ordinance nor is there any threat to public health and safety of having the driveway partially in a 100 year floodplain. The inundation will probably be only 6 to 8 inches, if there is a flood. A turnaround is not typically shown with a subdivision preliminary plat. It is his professional opinion that a fire approved turnaround can be constructed without additional disturbance to the riparian area. The sewer and water services will be located under the driveway, so the impact is in only one location. He disagreed that the driveway could cause conflicts between the owner of Lot 33 and the other potential owners. The driveway will serve as a common walkway from the road back to the common areas and he did not see any conflict with that at all. This is not a driveway through a soccer field, it is a 12 foot wide gravel driveway through a multi-purpose area. The area is not a developed park or common area, it will remain in its wild riparian state. He did not understand how not protecting a tiny piece of riparian resource could be a threat to the general public health, safety and welfare, when the remaining 11.1 acres are protected and enhanced. The driveway has been relocated specifically to avoid the riparian vegetation as much as possible. This is not a wetland but does include some floodplain, but the floodplain issue was decided at the first public hearing. The driveway issue is related to riparian vegetation only, it will wind among the vegetation and will be multi-purpose in terms of a walking path to go back and enjoy the riparian vegetation.

Chairman Evans asked what Brian's calculation of homesites was.

Nick Kaufman stated he did not have the figures, but he thought it was in the 20's somewhere. The 11.5 acres is the riparian area, the acres outside the floodplain. Perry said it was 36 homesites and they are developing 33 homesites. To refute Finding B, the request for the variance is unique to this property with its consolidation of floodplain, homes, Comprehensive Plan and zoning. With the Riparian Management Plan, there is not an opportunity for additional driveway access on Lot 32. The request is for Lot 33 only. To refute Finding C, they feel a hardship does result in denying the variance. Protecting the riparian vegetation the best way possible while still providing a building site, does create a hardship which has been mitigated. The driveway has been located where it will have the least amount of disturbance to riparian vegetation. The interpretation seems to be that no riparian vegetation anywhere can be disturbed, which is an absurd way to interpret the regulations. To refute Finding D, taking a building site violates the 2002 Growth Policy in a much more significant way. The Growth Policy calls for residential development which minimizes the impact to riparian resources. The 11.5 acres of riparian resource that are preserved are important, as is this building site. He is asking the Board to consider their request with the full indemnification of WGM Group for the design. It meets the subdivision regulations and meets and exceed the intent of the riparian regulations.

Commissioner Carey stated that the subdivision has already been approved, this action is to approve the Riparian Plan.

Chairman Evans stated she was instrumental in getting the riparian regulations drafted. There are times when she regrets that. The intention was to allow people to use their land and to also protect the riparian resources. It wasn't to prevent people from building because there might be a dogwood tree or a Hawthorne. The point was to try and protect the riparian vegetation so the birds had a place to nest and the deer had a place to hide, but still allow growth to take place. She did not see any reason to require the alternate access to Lot 25 and reorient the other house to face Golf Drive. It should be left the way it's been designed. She would prefer to live on a short court to have a feeling of privacy. She also sees nothing wrong with Lot 33 and its access the way it has been presented. The area designated as park/common area could be part of Lot 33, which would eliminate this issue altogether.

Perry Ashby stated that the long metal things Commissioner Curtiss saw on the property were placed there to do cleanup. They are aluminum scaffold planks placed there to span the wetlands so laborers could cross over and do the work. The owners of Lot 1 of Lolo Greens have the fence in the right-of-way situation. They are the second owners. The previous owners were fully aware that part of their land was in the public right-of-way; they knew this all along, it is on this plat and on the Lolo Greens plat. They decided to put their fence on the edge of their property which is 20 feet into the public right-of-way. All of the people on Lakeside, Glacier and in Lolo Greens have been sent letters notifying them that the subdivision has been approved and what, if any, impacts might occur and when traffic might increase. The owners of Lot 1 were sent a separate letter notifying them of the issue with their fence and that they might want to move it prior to the start of construction. When entering the property on Golf Drive past the existing house, there is an aspen grove about 100 feet in on the left. That aspen grove is on the east middle portion of Lot 32. The driveway for Lot 33 could be realigned to move it out of the low area and common area and put it onto Lot 32 and move all the lots lines to the west so there is still adequate building space. The logical place to put the driveway then is on the easterly boundary of Lot 32, thereby taking out the aspen grove. That is why they chose to put it on the easterly boundary of the aspen grove without damaging it.

Ryan Salsbury stated he was a project engineer with WGM Group. He would like to talk about Lot 33 from an engineering perspective. First, DEQ approval has been received for that lot. It has been looked at in detail and it can be serviced with sewer and water and still meet the requirements. The driveway is 190 feet in length, which may seem a little long, but it wasn't always designed that way. The realignment to minimize impacts to the riparian resources created the longer length. Also, to address floodplain issues, for the most part the road is one foot above the 100 year floodplain. Chances of it being affected by flood waters are nil in his professional opinion. The areas that are below the 100 year floodplain elevation are only one-tenth of a foot below the 3,149.5 foot floodplain elevation.

Commissioner Carey stated that staff did an excellent job on the report. These are close calls. Staff has good logic behind its recommendations. The developer and his representative make a strong case for their point of view as well. This is not a black and white issue. Staff made some good points that could strengthen the plan. This is a balance between private and public interests.

Commissioner Curtiss asked if a turnaround for Lot 33 could be done on the lot and not in the common area.

Nick Kaufman stated that could be made a condition.

Commissioner Curtiss stated that a lot of the concerns were clarified by the developer's representative. The common area where the entrance is located looks more like a hay field than a riparian area. She is not as concerned about the access to Lot 33 with the answers provided. Lot 25 does cause her some concern. The corner stake seems to be in a really dense riparian area.

Ryan Salsbury stated that the stake was done in March, prior to the relocation of the lot. The lot has been moved to the west to avoid that riparian resource.

Commissioner Carey asked if the developer would consider a condition that the house be located outside the riparian area.

Ryan Salsbury stated that it has been addressed in some ways. It is not possible to have a building on that lot that will not affect the riparian area at all. However, the grading plan shows a significant area of no disturbance that the house cannot impact. From an engineering perspective, moving that lot as proposed by staff creates the situation where water from the driveway will run into the adjacent lots. If the plan as shown is adopted, curb and gutter will route stormwater into the main road and be handled with the rest of the subdivision run-off. The plan as shown will provide two off-site parking spaces. If it is realigned as staff recommends, the parking reserve area will be lost.

Monte Sipe stated that the assumption is that the driveway could be designed similar to Perry Place to handle drainage. The parking is a requirement for short courts, which would not be necessary with the driveway easement and a 12 foot wide driveway.

Commissioner Curtiss stated that the decision comes down to a vision of riparian areas and whether or not the area should be completely undisturbed, or respected to provide wildlife habitat and still accommodate people. On Condition 6, some small equipment should be allowed, but she would not want kids riding dirt bikes through there. She did not have a concern with being able to do some maintenance in the area.

Commissioner Curtiss moved that the Board of County Commissioners delete staff recommended Condition 6. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners delete staff recommended Conditions 1, 2 and 3. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners amend staff recommended Condition 7 to move Lot 34 to Phase III of the phasing plan for the project. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Article 3-13(4)(B) of the Missoula County Subdivision Regulations which prohibits subdivision that encompass areas of riparian resource to place development inside areas of riparian resource, based on the findings of fact; delete the variance request from Article 3-3(1)(D)(iii) for Lot 25; and approve the variance request from Article 3-3(1)(D)(iii) of the Missoula County Subdivision Regulations which requires each lot to abut on and have access to a public or private street or road for Lot 33, based on the findings of fact.

Commissioner Carey stated that he would like to amend the motion in regard to the third variance request so that it is on the record that the variance is approved conditioned on the fire department's approval of a turnaround on Lot 33. He also wanted to make sure there were no future roads constructed on Lot 32.

Mike Sehestedt stated the variance is approved on the condition that it be used solely for the construction of a single access to Lot 33 and that once the access is created, it would not be the basis for further road development. It could be specified that it is the access to Lot 33 and it is approved for that purpose only. It could be made a non-exclusive access for the benefit of Lot 33, which takes away the possibility of any dispute later between other homeowners using it as a walkway.

Monte Sipe stated it is not clear when the driveway will be constructed. The water and sewer lines will also be extended at the developer's expense, not the applicant's. There is some concern that the lot owner could be doing these improvements at a later date with no specifics on containment within that easement. It is within the Air Stagnation Zone and the Health Department will require paving of the driveway. He suggested the infrastructure be done up front so it is in place so it's a portion of the grading and drainage design that will be reviewed.

Perry Ashby stated that asphalt paving and water and sewer service are contained in the bid documents for Phase I.

Commissioner Curtiss stated that she would start over on her motion, it would be easier to clarify what has been said and the motion was not seconded.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Article 3-13(4)(B) of the Missoula County Subdivision Regulations which prohibits subdivisions that encompass areas of riparian resource to place development inside areas of riparian resource, based on the findings of fact contained in the variance request. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Article 3-3(1)(D)(iii) of the Missoula County Subdivision Regulations which requires each lot to abut on and have access to a public or private street or road for Lot 33, conditional on a turnaround being approved by the appropriate fire jurisdiction on the buildable area of Lot 33 and that it is a non-exclusive easement for the benefit of Lot 33 as to users of the common area; for vehicular access purposes, it is limited to Lot 33, based on testimony presented. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the Willowbrook Meadows Resource Management Plan, Phasing Plan and Hold Harmless Agreement, based on the findings of fact and testimony presented and subject to the conditions as amended. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Mike Sehestedt stated for the record that this was a very good presentation by both sides; almost all of the issues were resolved.

**Willowbrook Meadows Riparian Resource Management Plan, Phasing Plan and Hold Harmless Agreement Conditions of Approval:**

1. Lots 1, 4-9 and 26-32 shall provide 15 foot riparian buffer setbacks for all structures, except decks, which shall have 10 foot riparian buffer setbacks from the rear property lines (fences will be permitted within the riparian buffer setbacks). These setbacks shall be shown on the final plat pertinent to each Phase and indicate the restrictions in a note on the plat with reference to the Riparian Resource Management Plan. Additionally, all other "Riparian Areas of No Disturbance" shown on the Rough Grading Plan dated April 20, 2004 shall be shown on the final plat pertinent to each Phase and noted on the plat with reference to the Riparian Resource Management Plan. This condition is subject to review and approval by OPG prior to final plat approval of each Phase. *Subdivision Regulations Article 3-1(5), 3-1(9), 3-3(D)(iii), 3-13 and OPG recommendation.*
2. The final plat for each phase, the grading plan and the Riparian Management Plan-South Map that reflects governing body approval shall be attached as an exhibit to all portions of the Riparian Resource Management Plan (3 documents). *Subdivision Regulations Article 3-1(5), 3-1(9), 3-3(D)(iii), 3-13 and OPG recommendation.*
3. Final plat filing for Phase I (Lots 1-6 and the adjoining common area) shall be submitted for final plat approval by January 7, 2005. Phase II (Lots 7-14 and 30-33) shall be submitted for final plat approval by January 7, 2006. Phase III (Lots 15-29 and preliminary approved Lot 34) shall be submitted for final plat approval by January 7, 2007. *Subdivision Regulations Article 4-1(17) and OPG recommendation.*

**Hearing: Petition to Alter Highway 200 Frontage Road (Greenough-Potomac area)**

**Hearing: Petition to Abandon a Portion of Sperry Grade Road (Greenough-Potomac area)**

Chuck Wright presented the staff reports. As the two petition relate to one another, he would give both reports at this time.

First, this is a petition to alter that certain County road specifically described as Highway 200 Frontage Road located in Section 35, Township 15 North, Range 14 West, from east line of Section 35 to a point where the existing road is within its right-of-way and further described in the Road Book of Missoula County Surveyor as 11 Old Blanchard Creek Road as shown Deer Lodge County. The reason for the request is that the existing road is not within the right-of-way. The Greenough/Potomac Fire Department, Walter E. Nelson and Missoula County were the landowners notified.

Second, this is a petition to abandon that certain County road specifically described as Sperry Grade Road, located in Section 35, Township 15 North, Range 14 West, from south line Missoula County Roadway (Book 268, Micro Page 485) to a line 30 feet north of and parallel with the centerline of existing County road (see Exhibit A) and further described in the Road Book of the Missoula County Surveyor as Sperry Grade Road. The reason for the request is there is no road within this portion of the right-of-way. The Greenough/Potomac Fire Department was the landowner notified.

The Greenough/Potomac Fire Department wants to build a fire station in this location. By altering the one right-of-way and abandoning the other, it will allow them to have more than an acre of land for a building site. It is a perfect place to put a fire station and a simple task to move the one right-of-way and abandon the other.

Commissioner Curtiss asked if the road to be altered was Highway 200.

Chuck Wright stated that it was not, it was a frontage road from Highway 200.

Chairman Evans opened the public hearings.

Kathy Wahl, Missoula County Clerk and Records Office, verified the petition was signed by 10 freeholders in Missoula County.

There being no further comments, the public hearings were recessed.

Chairman Evans stated that a site inspection must be conducted. A time will be scheduled and the Board will receive a report from the site inspection. They will make a decision on the petitions at the Public Meeting next Wednesday, July 7, 2004.

**Consideration: Elk Meadows Ranchettes, Lot 44 (2 lots on 11.44 acres) – Wapiti Road, north of Huson**

Tim Worley, Office of Planning and Grants, presented the staff report.

Mack Long is requesting approval of Lot 44, Elk Meadows Ranchettes Subdivision, a two-lot residential subdivision on 11.44 acres on Wapiti Road, north of Huson in the Sixmile area. It is near the end of Wapiti Road. The property is unzoned and the recommended Comprehensive Plan density is one dwelling unit per 10 acres. This proposal amounts to one dwelling unit per 5.72 acres.

Wapiti Road is an off-site road and the distance to the nearest County maintained road is about 1 mile. The width of Wapiti Road adjacent to the subdivision ranges from about 14 feet to 20 feet; therefore a variance to the 24 foot width standard is required. Staff is recommending conditional approval of the variance because a substandard road width of 20 feet or less makes it difficult for two vehicles to pass and for fire equipment. Also, Wildland/Residential Interface standards require road widths to be at least 20 feet. Along with recommending approval of the road width variance, staff is recommending that Wapiti Road be widened to a width of 20 feet from the first to the second driveway. There is a fence within the Wapiti Road easement that would potentially constrain road widening and pose a safety risk. There is an agreement in the works between the developer and the Homeowners Association to move the fence. Staff is recommended a condition that the fence be removed from the easement, prior to final plat approval. The other variance requested is from the rural subdivision walkway requirement on private roads. Again, the nearest County maintained paved road is Sixmile Road. There are no pedestrian connections within the entire Elk Meadows Ranchettes, so staff is comfortable recommending approval of the walkway variance.

Elk Meadows Ranchettes is served by its own community water system and there is a fire hydrant within a few hundred feet of this subdivision. Cindy Crittendon of Frenchtown Rural Fire reviewed the subdivision and confirmed that a water supply for fire protection was appropriate. The subdivision itself is in fairly open cover with a few coniferous trees, in an area referred to as the Intermix Wildland/Residential Interface. It is not in dense pine cover, but in a sprinkling of pine trees. As a result, there are some recommended conditions related to fire safety. The first is that the covenants that are part of the packet be amended to include information about turnarounds for dead end driveways that exceed 150 feet in length. The second is that roof construction standards from the Subdivision Regulations that specifically apply to WRI areas be added to the covenants.

Individual septic systems are planned for the subdivision. The new lot will connect to the Elk Meadows Ranchettes water system. There are a couple of areas of steep slope on the property that have been designated No Build Zones and no construction is planned for those areas. The eastern 30 feet of the subdivision has been designated a No Build/No Timber Removal Area for wildlife habitat enhancement.

Staff recommends weed control information be added to the covenants plus a revegetation plan, per Bill Otten's comments. The Health Department is recommending that radon mitigation information also be provided for this subdivision, which is also a recommended condition of approval. Staff recommends approval of the subdivision subject to the conditions in the staff report.

Commissioner Curtiss asked if the No Build/No Timber Removal was different than thinning. Does Timber Removal mean removing large trees for sale.

Mack Long stated there is a strip of timber along the east boundary. A piece of open ground right there is critical to Fish, Wildlife and Parks. The timber provides a movement corridor for the wildlife and he did not want the timber removed after he moved away. Some minor manipulation would not be a problem but he did not want the big trees cut down.

Michael Sehestedt asked if Elk Meadows Ranchettes was okay with adding one more home on their community water system.

Mack Long stated he had a letter from the water district authorizing the hookup and it is included in the packet.

Chairman Evans asked for public comments. There were none.

Commissioner Carey moved that the Board of County Commissioners conditionally approve the variance request from Section 3-2(1)(I) of the Missoula County Subdivision Regulations for surface width of Wapiti Road, based on the findings of fact set forth in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(8)(A)(iv) of the Missoula County Subdivision Regulations to not provide internal pedestrian connections and pedestrian connections to school bus stops and adjoining neighborhoods, based on the findings of fact set forth in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve Elk Meadows Ranchettes, Lot 44, Summary Subdivision, based on the findings of fact in the staff report and subject to the condition in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### **Elk Meadows Ranchettes, Lot 44, Summary Subdivision Conditions of Approval:**

1. Wapiti Road shall be widened to a 20 foot surface width from the northern property boundary to the driveway entrance for Lot 44B, prior to final plat approval. *Subdivision Regulations Article 3-2(1)(D-E), 3-2(3)(F) and OPG recommendation.*
2. The developer shall remove the fence from the road easement prior to final plat approval. *Subdivision Regulations Article 3-1(2) and OPG recommendation.*
3. The covenants shall be amended to include the following sections:
  - a. Dead end driveways in excess of 150 feet in length shall have approved turnarounds for fire apparatus. A turnaround shall be located within 150 feet of the building. A minimum unobstructed width of not less than 20 feet and an unobstructed vertical clearance of 13 feet, 6 inches shall be provided for any driveway over 150 feet.

The opening through a gate should be two feet wider than the road. Final design shall be approved through the Frenchtown Rural Fire District.

- b. The property owners within the Elk Meadows Ranchettes Lot 44 are advised that Missoula County has high radon potential and all new construction should incorporate passive radon mitigation systems.
  - c. The landowner shall maintain the property in compliance with the Montana County Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan.
  - d. The landowner shall revegetate any ground disturbance with beneficial species at the first appropriate opportunity after the disturbance occurs. *Subdivision Regulations Article 3-2(10)(E), 3-1(1), City-County Health Department and Weed District recommendation.*
4. The covenants shall be amended to include roof construction standards for areas of Wildland/Residential Interface. *Subdivision Regulations Article 5-3(5)(S).*
  5. A Revegetation Plan for disturbed sites shall be submitted to and approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 4:00 p.m.