1. CALL TO ORDER
Commissioners Present: Commissioner (Chair) Jean Curtiss, Commissioner Bill Carey

Commissioners Absent: Commissioner Michele Landquist

Staff Present: Hilary Schoendorf, CAPS

2. PLEDGE OF ALLEGIANCE

3. PUBLIC ANNOUNCEMENTS
None

3. PUBLIC COMMENT
Jeff Smith, co-chair 350 Missoula: Our mission is to encourage the transition to a renewal energy based society. 350 is an affiliated of an international organization called 350.org. Our name refers to the level of CO2 in our atmosphere that scientists believe is safe, the level at which there will be no permanent changes to our climate….350ppm (parts per million). Unfortunately last year for the first time scientist measured 400ppm in the atmosphere. We’re climbing by 2% a year. I think the County Commissioners have an opportunity; at least I want to bring to your attention an opportunity to weigh in on an issue of importance to Missoula County. There are two different Environmental impact statements being drafted right now about the Otter Creek Coal Mine, in southeastern Montana. The first is being done by the State Department of Environmental Quality, which is run by someone that we know very well in Missoula…Tracy Stone Manning. The Department is looking at the impacts of the new mine, which at its peak will generate about 30 million tons a year of coal. This coal is for export to China and will come through Missoula County on trains, for the most part. We think that the cumulative impacts include some of the train traffic that will come through Missoula County and the effects it will have on our health and safety and our environment. We’re encouraging elected officials from Missoula County to write the Department of Environmental Quality and ask them to, as part of their environmental impact statement, to include a public hearing in Missoula County.
Kate Campbell, first female brakeman hired by the railroads since WWII: I worked on the railroad for 16 years as a ‘brakeman’. I’m interested in a lot of aspects of this because we in Missoula County are going to get all the impacts and none of the benefits of this product that will be passing through our community. There are various estimates of how many more will be coming through every day. We’re not talking about two (2) or three (3) more trains a day, we’re talking about ~ Washington State seems to have settled on the estimate of 18 trains a day. It’s all speculative and dependent on how much coal they take out of the mine, which will go up every year. Let’s go with the lowest number…looking at 18 more trains through Missoula every day, these trains are 125 cars long, they’re each 110 tons, so they are really hard on the railroad track which is worrisome in terms of derailments and weakened areas of track. One of the main issues is the dust ~ the coal dust that’s going to come off of these cars, along with some coal nuggets. Another issue is blocking crossings. Our county goes from Beavertail Hill Park to Alberton and there are just over a dozen at-grade crossings. There’s a law that states that any improvements, any mitigation to the infrastructure of at-grade crossing improvements 95% of it reverts to the public. By law, the railroad is only responsible for 5%. Spokane was granted a public hearing; a lot of Montanans drove over to that public hearing. I would say that conservatively it was 10-1 opposing this plan. The range of testimony surprised me. There were nurses and doctors that are familiar with childhood asthma, that are worried about coal dust. The things that really stood out for people were the noise, the banging of those cars at crossings, the diesel fumes, the coal dust and the hindrance of emergency vehicles at the at-grade crossings. Public safety and health is a huge issue here that’s being taken seriously by Washington representatives. The other thing, and this again is speculative, but I don’t think it’s too far off the mark; we could potentially start to see Bakken Oil shipments coming through Missoula, depending on who they sign contracts with, where that oil is going. So we’re going to get coal unit trains and potentially Bakken Oil unit trains through here. I would argue that the constituency in this county will be directly affected; this is not a virtual threat. I encourage you to think about your constituency in the county and to understand that many thousands of people will be effected by this and to help us request a hearing in Western Montana for the accumulative effects of this project.

Commissioner Carey: How long, do you know, are they planning to operate the Otter Creek Mine at the level you’re talking about?

Kate Campbell: That’s a really good question and I’ve heard like 20 years or something. It’s a stunningly short period of time, considering that the impact that this is going to have on us. It’s not a long term process. The millions of tons that are estimated to come out of there ~ by 2018 they are saying between 74 and 99 million tons of coal will come out of Otter Creek. By 2023 between 128 to 170 million tons. This coal is being sent to Asia, this is not for domestic market.

5. ROUTINE ADMINISTRATIVE ACTIONS
Current Claims List ($2,223,766.27)

Executive Session
Commissioner Carey made motion that the Board of County Commissioners approve the Current Claims List in the amount of $2,223,766.27. Chair Curtiss second the motion. The motion carried a vote of 2-0.

6. HEARING
Sundown Acres (3 lots on 4.79 acres) Sundown Road, Target Range Area.

Hilary Schoendorf gave staff report. I’m here to present the proposal for Sundown Acres Subdivision, 3 lots on 4.79 acres. The subject property contains a single family residence and existing barn. There’s an irrigation ditch that runs along the Southern boundary line. There’s an existing driveway that bisects the property and accesses the existing single family residence. The subject property is located in the Target Range west end zoning district, this zoning district allows for one single family residential unit per property and has a minimum lot size of one (1) acre. The property is located in the 2010 Target Range Neighborhood Plan; it designates this property as one (1) dwelling unit per acre…so it’s in line with the zoning. The preliminary plat shows that the proposed lot 1 will contain the existing house; it’ll be approximately an acre. Proposed lot 2 will contain the existing barn. Lot 2 will be restricted to be used only for agricultural purposes and it is also approximately an acre. Lot 3 is vacant currently but it’s the proposed location for a new home, it is 2.77 acres. The existing driveway that is currently there is proposed to be abandoned and a new onsite road will access all three (3) lots, that road is on the Eastern side of the property line called Downriver Drive. The applicants are again designating lot 2 approximately an acre to Ag land to mitigate the impacts for the loss of land. Lot 2 currently as proposed is for Ag purposes and this is done through the covenants…this is the language that is included in the covenants; lot 2 of this subdivision shall be used exclusively for agricultural purposes. And structures erected on the said properties such as a barn, toolshed or corral must be intended for agricultural purposes only and used as such. This restrictive covenant shall run with the said real property and be revocable only by mutual consent of the property owner of the said property and the Missoula Board of County Commissioners. Staff added two (2) conditions to basically strengthen this restriction so that in the case it was overlooked in the covenants, we requested that it be placed on the face of the plat, as well in a deed with the property. There’s currently a 20 foot irrigation easement along the southern boundary and there is an irrigation ditch easement that will run along the western boundary of lot 3 and along the southern boundary of lot 2. No water rights are being abandoned or transferred. The off-site road is Sundown Road in this case, its 20 feet wide within a 60 foot county right-of-way, it meets the road standards for the Missoula County Subdivision Regulations. The proposed Downriver Drive, which accesses all three (3) lots; Missoula County Subdivision Regulations state that for an onsite road that access three (3) lots it has to be 18 feet wide for the paved width. For a road that accesses two (2) lots, it can narrow to 14 feet wide. At this point, what’s being proposed is Downriver Drive starts off at 18 feet wide and then narrows right after the first driveway to 14 feet. At this point at 14 feet it has 3 foot shoulders on each side, so it gives it a 20 foot width, which allows it to meet fire code. This is also a loop driveway so it provides a turnaround as well. The applicants are requesting two (2) variances from the pedestrian facility standards. Missoula County Regulations required that a walkway goes along the perimeter of the subdivision along a roadway; so in this case a walkway would be required along Sundown. And also a walkway would be required along one side of the onsite road, so they are requesting that a variance from these two standards. This is really because this is kind of viewed as a…although this a
three (3) lot subdivision, we looked at it as a two (2) lot subdivision since lot 2 is only being used for agricultural purposes and does not have a buildable right, so only two (2) homes can be built. This standard is only triggered during a three (3) lot subdivision and not a two (2) lot. They’re proposing an individual well and septic system for lot 3 for the new home. Lot 1 has an existing septic and drainfield and there’s no proposal for water supply or wastewater treatment for lot 2, since it’s only to be used for Ag purposes.

Staff recommends approval subject to the conditions that are in the staff report.

**Chair Curtiss:** Is there an RSID waiver for a future sidewalk on Sundown Road?

**Hilary Schoendorf:** There is. It’s on page 18 ~ #6.

**Peter Walker-Keleher, DJ&A:** Hilary did an excellent job of presenting the project; I don’t have anything to add at this time.

**Fred Stewart:** On behalf of the Target Range Homeowners Association and I’m also an adjoining property owner to the north of this particular property. I had an opportunity to make comments earlier, as a Target Range Homeowner Association representative. I talked to Hilary this morning to find out that indeed one of the comments that I had made earlier had been incorporated into her presented, I was glad to hear that. We’re okay with the request for variances in terms of the walkways and so on; I think that’s totally appropriate with the character of the neighborhood. There were a couple of things that I wanted to comment on and I don’t know that it’s specific for this particular property, you guys will have to help me on that. The protection of the Ag land is something that I’m personally quite interested in and the homeowners are quite interested in as an important resource in the community. I wonder about the wording which is in the covenant and the suggestion was that it would be not just in the covenants but, it would be part of the deed as well. Even so, the wording is not air tight, in that it says; “at some future point, if the owner and the County Commissioners agree mutual consent, then it could change out of Ag purpose and into residential purpose”, I’m assuming. So I’m wondering if in this case, and possibly in other cases, I’m not familiar with the wording that’s typically used, but I’m wondering if it wouldn’t be possible to just say that; “this land is dedicated for agricultural purposes.” Leave out the part about; “unless at some future time the Commissioners and the owner by mutual consent decided to do something different.”

**Chair Curtiss:** Fred, I think that language comes from State law regarding – we normally do this type of thing through what’s called an exemption process, to allow for a lot to be created without going through subdivision to maintain it for agriculture. So that is the language that’s in State law. But in order for it to have the Ag exemption taken off, it still has to go through subdivision review. So it has a whole other process, that we give the community another opportunity, to see if things had changed in your neighborhood that it made sense or not.

**Fred Stewart:** I understand that and Hilary explained that to me well this morning, but it’s still a comment that I think that in any time there’s…

**Chair Curtiss:** I think this is the first time we’ve ever had somebody come and say I want to do a subdivision and one (1) lot would be agricultural only. Usually those come to us
just separately as an exemption in law, like the family transfer and boundary line relocations. This is from the law so we used it this way.

**Fred Stewart:** It’s my observation, that’s my comment. Another comment had to do with information that was on an earlier document and I didn’t go to the website to look at all of the detail. A comment that I made earlier was in reference to the share of the road cost to the borne by the agricultural lot. My recollection is that the Ag lot would be responsible for 50% of future maintenance cost of the road and the driveway and I just felt…

**Chair Curtiss:** Is that in the covenants then?

**Hilary Schoendorf:** I’m not sure where that language is.

**Fred Stewart:** It may have been in the covenants. So my point was that agricultural use of that driveway would most likely be pretty limited. It seemed that putting 50% of future cost of Ag, the use of that….who ever owns that lot would be relatively high and would make it more expensive for agricultural production over time. That’s a common argument that I think we hear, is that these small parcels that go into Ag – they’re too small to be economically viable and they are just going to become a week patch? So I just wanted to bring that up as a problem that could exist for someone who wanted to use it for agricultural purposes. And to put a little bit different hat on; I would be interested in extending my orchard there and my next door neighbor is interested in that property. There will be interest in that property for Ag purposes and trying to set an example of how agriculture could be given an advantage, not an unfair advantage but some advantage, in terms of what the costs are to keep it in agriculture, I think would be helpful.

**Peter Walker-Keleher:** I was just looking at the latest version and I believe that we have 20% allocated to lot 2, the agricultural lot. I just spoke with the owner and there’s no problem with putting all that cost on the owners of lot 2 & 3. I think to Mr. Stewart’s point in terms of not wanting to be punitive towards the owners of the agricultural lot.

**Hilary Schoendorf:** You mean 1 & 3? Not lot 2.

**Peter Walker-Keleher:** The cost should just go to lots 1 & 3, thanks.

**Chair Curtiss:** The Irrigation easement that shown – the 10 foot one…That’s just an easement it’s not going to extend the water at this time, right?

**Hilary Schoendorf:** I believe it is the construction of a future easement for piping. Is that true?

**Chair Curtiss:** I just wondered if the extension of the irrigation facilities to lot 2 & lot 1 are part of what would be done before you file a plat or if it’s just putting the easement there for future.

**Peter Walker-Keleher:** At this point it’s easement. Then the owners of lot 2 or lot 1 would have the right to construct either an irrigation ditch or lay pipe, but that would not be a part of this construction prior to final plat.
Chair Curtiss: But it does have in the language that the rights to the irrigation water go to all three (3) lots, right?

Peter Walker-Keleher: Correct. And I think the irrigation right…the water right is held by the Missoula Irrigation District. But the intent of those easements is that water can be conveyed to those other two lots.

Chair Curtiss: One other comment I wanted to make is just in regard to the comments from CFAC, where they commented they’d like to see more land in the agriculture lot. This is very unique, I think, to have the lot actually created for Ag purposes only but that doesn’t mean that some of the 2.7 acres that are left in the new lot, with the new house, can’t be used for Ag too. I think that’s a fair proposal.

Executive Session
Chair Curtiss: Hilary, where would we offer to change that one condition for driveway maintenance. Can we add one?

Hilary Schoendorf: It’s not addressed in the staff report but we could add a condition. Maybe I could draft a condition pretty quickly.

Chair Curtiss: So that would be to amend the covenants?

Hilary Schoendorf: Yes, to amend the covenants.

Chair Curtiss: Which tab?

Hilary Schoendorf: Appendix D, Section 3.

Chair Curtiss: Peter, is that what you want to do is just split 50/50 for lot 1 & 3?

Peter Walker-Keleher: Yes.

Hilary Schoendorf: So we can just say; the covenants shall be amended as follows, lot 1 and lot 3 to pay 50% of all maintenance costs for the roadway.

Chair Curtiss: So it would be to amend the covenants section 3, driveway maintenance.

Hilary Schoendorf: So you’re changing the first sentence to say; lots 1 and 3 shall share…(striking out lot 2). And change the next to last sentence to say; lot 1 to pay 50% and lot 3 to pay 50% (striking out lot 2 to pay 20%).

Chair Curtiss: Yes.

Motion
Commissioner Carey made motion that the Board of County Commissioners approve the above changes to Appendix D, Section 3, Driveway Maintenance. Chair Curtiss second the motion. The motion carried a vote of 2-0.
Motion
Commissioner Carey made motion that the Board of County Commissioners approve the variance request from article 3.3.7.3 to waive the requirement for a pedestrian walkway on one side of the on-site road, Downriver Drive, based on the findings and fact in the staff report. Chair Curtiss second the motion. The motion carried a vote of 2-0.

Motion
Commissioner Carey made motion that the Board of County Commissioners approve the variance request from article 3.3.7.3 to waive the requirement for a pedestrian walkway along the perimeter of the subdivision that abuts the road Sundown Drive, based on the findings and fact in the staff report. Chair Curtiss second the motion. The motion carried a vote of 2-0.

Motion
Commissioner Carey made motion that the Board of County Commissioners approve the Sundown Acres Subdivision based on the findings and facts in the staff report, and subject to the recommended conditions of approval, and the amended covenants in the staff report. Chair Curtiss second the motion. The motion carried a vote of 2-0.

7. OTHER BUSINESS
None

8. RECESS
Being no further business to come before the Board the Commissioners are in recess at 2:20.